



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.1559 of 2023
and C.M.P.No.10216 of 2023

Lakshmipriya

... Petitioner

VS.

1.Tamizhazhagan

2.R.A.Saravanan

3.T.Kavitha

4.S.Mary

5.Salyjose

6.Mahendran

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 18.02.2023 passed in I.A.No.1891 of 2022 in O.S.No.106 of 2019 on the file of the Principal District Munsif's Court, Kallakurichi.

For Petitioner : Mrs.Hema Sampath
Senior Counsel
for M/s.R.Meenal



C.R.P.No.1559 of 2023

For R1 to R4 : Mr.C.Suraj
and Mr.M.V.Kartik
for M/s.A.Ashwiin Kumar

For R5 and R6 : No Appearance

ORDER

The Civil Revision Petition is filed challenging the order passed by the Principal District Munsif's Court, Kallakurichi in I.A.No.1891 of 2022 in O.S.No.106 of 2019, dated 18.02.2023 allowing the application filed by the respondents 1 to 4/plaintiffs seeking amendment of the plaint.

2. Originally, the respondents 1 to 4 herein filed a suit for permanent injunction restraining the petitioner and other defendant from altering the physical features in the suit property. Now, the instant application has been filed by the respondents 1 to 4/plaintiffs seeking amendment of the plaint to include prayer for mandatory injunction on the ground that the defendants had put up construction in the suit property pending suit. The said amendment application was allowed by the Trial Court. Aggrieved by the same, the petitioner/3rd defendant has come before this Court.



C.R.P.No.1559 of 2023

3. The learned Senior Counsel appearing for the petitioner submitted that as per the Advocate Commissioner's report filed before the Trial Court on 13.08.2019, there were construction activities in the suit property even on 08.08.2019 and therefore, the instant application filed by the respondents 1 to 4 seeking inclusion of prayer for mandatory injunction on 15.12.2022 beyond the period of 3 years and therefore, the same is barred by limitation. The learned Senior Counsel further submitted that the petitioner as well as respondents purchased the suit property pending O.S.No.543 of 2003. In the written statement filed by the petitioner, the title of the respondents 1 to 4/plaintiffs was seriously disputed and therefore, the prayer for mandatory injunction sought to be introduced by the respondents 1 to 4 without prayer for declaration of title is not at all maintainable. In support of her contention, the learned Senior Counsel appearing for the petitioner relied on the following judgments:-

- (i) ***Rajkumar Gurawara (Dead) Through LRS vs. S.K.Sarvagi and Company Private Limited and Another*** reported in ***(2008) 14 SCC 364***.
- (ii) ***P.Subba Naicker vs. Veluchamy Naicker and three others*** reported in ***2004 (2) CTC 742***.



C.R.P.No.1559 of 2023

WEB COPY

(iii) ***Gurunath Manohar Pavaskar and Others vs. Nagesh Siddappa***

Navalgund and others reported in (2007) 13 SCC 565.

(iv) ***Correspondence, RBANMS Educational Institution vs.***

B.Gunashekar and Another reported in 2025 SCC Online SC 793.

4. Per Contra, the learned counsel appearing for the respondents 1 to 4 by relying on the judgment of Apex Court in ***M/s.Arif Azim Co. Ltd. vs. M/s.Aptech Ltd*** reported in 2024 INSC 155 submitted that if the Covid period is excluded, the prayer for mandatory injunction is very well within limitation. He also submitted that at the time of considering the amendment application, Court cannot go to the merits of the suit.

5. In ***M/s.Arif Azim Co. Ltd.***, case cited supra while explaining the exclusion of Covid period while computing limitation, the Apex Court observed as follows:-

“82. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in *Suo Motu Civil Writ Petition No. 03/2020* directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view



of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022.”

6. In the case on hand, the Advocate Commissioner visited the suit property on 08.08.2019 and filed his report on 13.08.2019 before the Trial Court. In his report, he mentioned about the construction activities in the suit property. From the report of the Advocate Commissioner, we cannot come to a conclusion as to when the construction by the defendant were completed in the suit property. However, it is clear even on 08.08.2019 the defendants started construction activities in the suit property. If that date is taken as the starting point for the limitation, the 3 years period would expire on 08.08.2022. However, in view of the intervention of Covid Pandemic, as per the law settled by the Apex Court in the above mentioned case law, the period between 15.03.2020 to 28.02.2022 has to be excluded while computing the limitation for initiation of any legal proceedings. If that period is excluded, the amendment application which was filed on 15.12.2022 is very well within 3 years from the date of Advocate Commissioner's report. In such circumstances, the objection raised by the



C.R.P.No.1559 of 2023

learned Senior Counsel appearing for the petitioner in respect of limitation is not acceptable to this Court.

7. The learned Senior Counsel appearing for the petitioner vehemently contended that the prayer for mandatory injunction is not at all maintainable, without prayer for declaration of title in view of the serious dispute raised by the petitioner/3rd defendant in her written statement denying the title of the respondents 1 to 4/plaintiffs.

8. As far as maintainability of the prayer for mandatory injunction is concerned, after allowing of the amendment application, the petitioner is entitled to file additional written statement raising all the defences against the new prayer. The maintainability of the prayer for mandatory injunction simpliciter cannot be considered at this stage. The petitioner is entitled to argue the said point at the time of final disposal.

9. The learned Senior Counsel appearing for the petitioner relied on the judgment of the Apex Court in ***P.Subba Naicker vs. Veluchamy Naicker and three others*** reported in **2004 (2) CTC 742** for the purpose that the respondents 1 to 4/plaintiffs failed to explain their failure to seek amendment before commencement of trial.



10. In the case on hand, originally the suit was filed for permanent injunction restraining the defendants from putting up any construction in the suit property. Now, an amendment application is filed to include the prayer for mandatory injunction on the ground that construction was put up pending suit. It is settled law that if the original prayer sought for in the suit has become inappropriate, the Court is entitled to mould the relief and grant appropriate relief. In such circumstances, when it is stated by the respondents 1 to 4 that construction was put up by the defendants pending suit, they are entitled to seek appropriate prayer for mandatory injunction. Whether the construction sought to be removed was put up pending suit or not, cannot be decided while considering the amendment application, the same shall be decided only at the time of final disposal based on the evidence. Hence, Court shall be liberal in considering the amendment application seeking new prayer based on an event which occurred subsequent to filing of suit.

11. In view of the fact that the construction is claimed to be put up pending suit, this Court is inclined to allow the amendment application filed by the respondents 1 to 4, especially when the Court is empowered to mould the relief, even without specific prayer.



C.R.P.No.1559 of 2023

12. The learned Senior Counsel appearing for the petitioner by relying on the judgment of the Apex Court in ***Gurunath Manohar Pavaskar and Others vs. Nagesh Siddappa Navalgund and others*** reported in ***(2007) 13 SCC 565*** and ***Correspondence, RBANMS Educational Institution vs. B.Gunashekar and Another*** reported in ***2025 SCC Online SC 793*** vehemently contended that the prayer for mandatory injunction without prayer for declaration is not at all maintainable. The case laws relied on by the learned Senior Counsel appearing for the petitioner are relating to the appeal filed by the parties, after disposal of the suit. Here, the trial in the suit is not over and we are only in the stage of considering the application for amendment of prayer.

13. As mentioned earlier, the maintainability of the prayer for mandatory injunction simpliciter without prayer for declaration can be raised by the petitioner at the time of final disposal. Therefore, based on the above judgments rendered by the Apex Court, which were decided in the appeals, we cannot reject the prayer at the threshold. In view of the same, the said objection raised by the learned Senior Counsel appearing for the petitioner is also not acceptable to this Court.



C.R.P.No.1559 of 2023

14. Accordingly, the Civil Revision Petition stands dismissed by confirming the fair and final order passed by the Principal District Munsif's Court, Kallakurichi allowing the amendment application filed by the respondents 1 to 4/plaintiffs in I.A.No.1891 of 2022 in O.S.No.106 of 2019, dated 18.02.2023.

15. It is made clear that the petitioner is entitled to file additional written statement raising all defences against the newly introduced prayer for mandatory injunction. No costs. Consequently, the connected civil miscellaneous petition is closed.

04.02.2026

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
dm

To

The Principal District Munsif's Court,
Kallakurichi.



WEB COPY



C.R.P.No.1559 of 2023

S.SOUNTHAR, J.

dm

C.R.P.No.1559 of 2023

04.02.2026