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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.02.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3140 of 2025
and CMP.No.17506 of 2025

- 1.Thulasimani
- 2.A.N.Chandrasekaran
- 3.K.Ravichandran

... Petitioners

vs.

- 1.Bakkialakshmi
- 2.Ponnusamy (died)
[Respondent-2 died. Respondents 1 and 3 (who is already on record) are recorded as LR's of the deceased R-2 viz. Ponnusamy as per memo dated 09.09.2025 are recorded and vide Court order dated 20.01.2026 made in CRP.No.3140 of 2025 and CMP.No.17506 of 2025]
- 3.P.Suresh Kumar
- 4.Shriram City Union Finance Limited,
23, Pudukottaimain Road,
Kallukuzhi, Trichy – 620 020.
- 5.Indian Overseas Bank,
Office at 95, Srinivasanpuram,
Coimbatore Main Road,
Avinashi, Tiruppur District.
- 6.A.Muthusamy

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 03.03.2025 made in I.A.No.4 of 2025 in O.S.No.54 of 2002 by District Munsif Court, Palladam, Tiruppur District.



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For Petitioners : Mr.A.Athimoolam

For Respondents :Mr.V.Ramamurthy for R1 & R3
Mr.A.Swaminathan for R4
R2-died
Mrs.N.Geetha for R5
No Appearance for R6

ORDER

This Civil Revision Petition is filed challenging the order passed by the trial Court, dismissing the amendment application filed by the petitioner.

2. The petitioner filed a suit for declaration and recovery of possession. When the suit was pending, he filed an application for amendment seeking inclusion of prayer for mandatory injunction. According to the petitioner, when the suit was pending, the defendants trespassed into the suit property and illegally put up construction. The said application was opposed by the respondents on the ground that existence of construction in the suit property was mentioned by the first defendant in his written statement even in the year 2002 and therefore, the present application filed by the petitioner seeking inclusion in mandatory injunction is barred by limitation. The trial Court dismissed the application filed by the petitioner on the ground that the prayer for mandatory injunction is barred by

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limitation. Aggrieved by the same, the petitioner has come before this Court.

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3. The learned counsel appearing for the petitioner submitted that pending suit, the defendants entered into the property and put up construction. Therefore, the amendment sought for by the petitioner to remove the construction shall be allowed. He also submitted the amendment application was based on subsequent construction, therefore, the Court shall be liberal in taking into consideration the amendment application.

4. The learned counsel for the respondent would submit that the existence of construction was mentioned in the written statement filed by the first defendant as early as on 2002 and therefore, the amendment application filed by the petitioner in the year 2025 cannot be considered due to limitation.

5. The petitioner initially filed a suit for bare injunction and the same was subsequently amended, therefore as on today, the prayer is for declaration of title and recovery of possession. When the petitioner seeks larger relief of recovery of possession, there is no necessity for him to seek removal of construction. Once the petitioner establishes his right to get



possession of the suit properties, the construction put up by the defendants, after filing of the suit is liable to be removed and executing Court has got incidental power to order removal of the construction that came into existence pending suit. In this regard reference may be had to decision of this Court in Madasami Vs. Govindaraj reported in 2007 (1) CTC 217. The relevant observation of Court reads as follows:

16. It appears from para-7 of its Order that only with reference to the Amin's return, the Executing Court came to the conclusion that the amended construction existed in the lane even prior to the suit and the Executing Court proceeded on the premise that the wall existed even before the suit and when the Decree-Holder had not taken steps for amending the plaint, it did not think it proper to Order removal of superstructure. On the proposition regarding permissibility of removal of illegal or unlawful construction made pendente lite by the Executing Court, we may refer to the decision of the Supreme Court in MANU/SC/0212/1996 : 1996 (1) LW 145 [B. Gangadhar v. B.G. Rajalingam]. In the said case also, the Bailiff returned the warrant of delivery of possession on the ground that the Judgment-Debtor/Tenant had constructed shops and inducted Tenants into possession and therefore, he could not execute the warrant. After enquiry, the Executing Court directed the Bailiff by warrant to demolish shops and deliver vacant possession to the Decree-Holder. The Petitioner challenged the Order in revision, but was unsuccessful. In the Special Leave Petition preferred before the Supreme Court, holding that the Executing Court is mandated to decide all questions relating to



right, title or interest in the property in the execution proceedings and that Executing Court would further be justified to Order removal of unlawful construction made pendente lite, the Supreme Court has held thus:

7.The Executing Court, therefore, would be justified to order its removal of unlawful or illegal construction made pendente lite so that the Decree for possession or eviction, as the case may be, is effectually and completely executed and the delivery of possession is given to the Decree-Holder expeditiously. Admittedly, pending suit the Petitioner had constructed shops and inducted Tenants inpossession without permission of the Court. The only course would be to decide the dispute in the execution proceedings and not by a separate suit.

8. Order 21, Rule 35(3) envisages that:Rule 35(3) of Order 21 itself manifests that when a Decree for possession of immovable property was granted and delivery of possession was directed to be done, the Court executing the Decree is entitled to pass such incidental, ancillary or necessary orders for effective enforcement of the Decree for possession. That power also includes the power to remove any obstruction or superstructure made pendente lite. The exercise of incidental, ancillary and inherent power is consequential to deliver possession of the property in execution of the Decree. No doubt, the Decree does not contain a mandatory injunction for demolition. But,



when the Decree for possession had become final and the Judgment- Debtor or a person interested or claiming right through the Judgment-Debtor has taken law in his hands and made any constructions on the property pending suit, the Decree-Holder is not bound by any such construction. The relief of mandatory injunction, therefore, is consequential to or necessary for effectuation of the Decree for possession. It is not necessary to file a separate suit when the construction was made pending suit without permission of the Court. Otherwise, the Decree becomes inexecutable driving the Plaintiff again for another round of litigation which the Code expressly prohibits such multiplicity of proceedings.

17. When the construction was made pendente lite, the Executing Court ought to have ordered removal of obstruction of the superstructure made pendente lite. It cannot be disputed that the Respondent was trying to prevent execution of the Decree in one way or other. In that view of the matter, the impugned Order is to be set aside, directing the Executing Court to deliver possession of the suit lane after removal of the obstruction or demolition, as the case may be. As per the decision of the Supreme Court, in the case cited supra, what is relevant is only a warning by the Bailiff, to deliver peaceful possession and if the Respondent causes obstruction, the Bailiff is entitled to remove the obstruction, cause the construction demolished and deliver vacant possession to the Decree-Holder in terms of the Decree.



N 6. The above decision was followed by me in ***Rajasekar Vs.Durai Kannu and others*** reported in ***2024 (2) MWN [civil] 808***. Therefore, absolutely, there is no necessity for the petitioner to seek a prayer for mandatory injunction to remove the construction which came into existence pending suit. Therefore, the amendment sought for the petitioner is unnecessary and hence it need not be considered.

7. Accordingly, this Civil Revision Petition stands dismissed by confirming the order passed by the trial Court. Since this Court comes to the conclusion, the prayer for mandatory injunction is not necessary, there is no need to decide the question of limitation for seeking relief of mandatory injunction. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court,
Palladam, Tiruppur District.



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S.SOUNTHAR, J.

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