



WEB COPY

CRP No. 2081 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-02-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**CRP No. 2081 of 2025 and
CMP.No.12136 of 2025**

N.Balakrishnan

..Petitioner(s)

Vs

Jothimani

..Respondent(s)

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Order and decretal order dated 03.01.2025 passed in IA.No. 8 of 2024 in OS.No. 248 of 2021 on the file of Subordinate Judge, Pollachi

For Petitioner(s): Mr.C.Jagadish

For Respondent(s): M/s.T.Sathya Narayanan

ORDER

The civil revision petition is filed challenging the order passed by the Trial court allowing the application filed by the respondent/plaintiff.

2. The respondent herein filed a suit seeking declaration of title and recovery of possession of encroached portion in the suit property. He also sought for permanent injunction restraining the defendant from putting up any construction in the suit property. Further, he prayed for mandatory injunction directing the defendant to demolish the illegal construction in the suit property.



He also sought for an injunction restraining the defendant from interfering with his possession over the suit property.

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3. Pending suit, an Advocate Commissioner was appointed by the Trial Court. He filed a report stating that 15 cents of the property were encroached by the defendant. Based on the said report, the respondent filed an application seeking amendment of the plaint so as to mention the exact extent of encroachment in the plaint description and also in the body of the plaint. In the meantime, the petitioner herein filed an application in I.A.No.7 of 2022 seeking to scrap the report filed by the Advocate Commissioner on the ground that notice was not properly served. The said IA is still pending. The Trial Court, without taking up the said IA for consideration, considered the amendment application filed by the respondent and allowed the same. Aggrieved by the said order, the petitioner has come before this Court.

4. The learned counsel for the petitioner submitted that when the application seeking scrapping of the Advocate Commissioner's report is pending disposal, the Trial Court ought not have considered the amendment application filed by the respondent based on the Advocate Commissioner's report.

5. The learned counsel for the respondent, by drawing attention of this Court to the pleadings in the plaint, submitted that even in the original plaint, he reserved his right to seek amendment of the plaint based on the Advocate Commissioner's report. Therefore, the Trial court is justified in allowing the



application for amendment based on the report.

6. The narration of the facts above would make it clear that petitioner herein filed an application in I.A.No.7 of 2022 seeking to scrap the Advocate Commissioner's report dated 11.07.2022 and direct the Advocate Commissioner to file fresh report. The said petition was filed by the petitioner on 16.08.2022. Subsequently, the amendment application has been filed by the respondent on 29.11.2023 which was numbered as I.A.No.8 of 2024. Though amendment application was filed by the respondent subsequent to the petition filed by the petitioner seeking scrapping of the Advocate Commissioner's report, the amendment application was taken up for hearing and allowed.

7. A perusal of the affidavit filed in amendment application would make it clear that the very basis for amendment is the Advocate Commissioner's report dated 11.07.2022 which is sought to be scrapped by the petitioner in I.A.No.7 of 2022. In such circumstances, the Trial Court is not justified in allowing the amendment application filed by the respondent when petition for scrapping of the Advocate Commissioner report filed by the petitioner is still pending disposal. Therefore, the impugned order is set aside and the matter is remitted back to the file of Trial Court and the Trial Court is directed to consider the I.A.No.7 of 2022 first and dispose of the same. Thereafter, the amendment application filed by the respondent shall be taken into consideration and orders shall be passed on its own merits without being influenced by anything said in this order.



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8. In view of the above, the civil revision petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
nr

To

The Sub-Ordinate Judge, Pollachi.



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S.SOUNTHAR, J.

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