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C.R.P.No.3790 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.01.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3790 of 2024

and

C.M.P.No.20740 of 2024

N.R.Karthikeyan

.... Petitioner

Vs

1.Kiruthiga

2.Bhuvaneshwari

3.Lakshmipriya

.... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and final order passed in I.A.No.2 of 2022 in O.S.No.14 of 2016 on the file of the IV Additional District Munsif at Salem, dated 03.04.2024 and to set aside the same.

For Petitioners : Mr.B.Vijayakumar

For R1 : No appearance

For R2 & R3 : Mr.N.Umapathi

ORDER

This Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner/plaintiff seeking amendment of the plaint.

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2. The petitioner herein filed a suit seeking a declaration that the Sale Agreement dated 22.11.2012 and Will dated 29.05.2013 are null and void. Pending suit, the petitioner filed an instant application seeking amendment of the plaint to include the prayer for recovery of possession of a portion of the suit property to an extent of 300 sq.ft. The said application was dismissed by the Trial Court, and aggrieved by the same, the petitioner has come before this Court.

3. The learned counsel for the petitioner would submit that pending suit, the defendants encroached a portion of the suit property to an extent of 300 sq.ft. Therefore, the petitioner was constrained to file the above amendment application and the said application was erroneously dismissed by the Trial Court. Further, he would submit that allowing the application is absolutely necessary to decide all the controversies involved in the suit.

4. The learned counsel for the respondent would submit that though the petitioner has claimed that the suit property was encroached in the year 2020, in the proof affidavit filed by the petitioner on 20.12.2021, he has not mentioned any encroachment. It is further stated in the legal notice issued by the petitioner dated 24.04.2022, there was no mention about the alleged encroachment made by the defendants in the year 2020.



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5. The specific case of the petitioner is that during the pendency of the suit, a portion of the suit property was encroached by the defendants. While considering the amendment application, this Court cannot go into the merits of the new prayer sought, viz., whether the cause of action for recovery of possession has been made out by the petitioner or not as the same has to be decided by the Trial Court based on the evidence to be let in by the parties. Even after amendment application is dismissed, the petitioner is entitled to file a separate suit for relief of recovery of possession based on the alleged subsequent cause of action which came into existence after the filing of the suit. Therefore, in order to prevent multiplicity of proceedings, this Court feels it is better to allow the amendment application so that all the disputes between parties can be adjudicated in a single proceeding.

6. Accordingly, this Civil Revision Petition stands allowed by setting aside the order passed in I.A.No.2 of 2022 in O.S.No.14 of 2016 on the file of the IV Additional District Munsif, Salem. The respondents are at liberty to file an additional written statement raising all their defences, including non availability of the cause of action. Consequently, connected miscellaneous petition is closed. No costs.

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Internet: Yes/No

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S.SOUNTHAR.J.

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To
The IV Additional District Munsif,
Salem.

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