



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-03-2026

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRP No. 1567 of 2017
and CMP.No.7324 of 2017

Ramasamy(died)

2. Muthusamy

(Sole Petitioner Died. Petitioners 2 is brought on record as LR of the deceased sole Petitioner Viz. Ramasamy vide court order dated 09.01.2024 made in CMP Nos.1127,1128 and 1133 of 2023 in CRP No.1567 of 2017).

..Petitioner(s)

Vs

1. Kandasamy

2. Palanisamy

..Respondent(s)

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the Order and decreetal order of the District Munsif, Attur in dismissing the application filed for amendment in I.A.No.477/2016 in O.S.No.110 of 2007 on the file of District Munsif, Attur dated 07.10.2016.

For Petitioner(s):

Ms.V.Srimathi

For Respondent(s):

R1 - Died

Mr.K.Shakespeare for R2

ORDER

This Civil Revision has been filed challenging the order, dated 07.10.2016 made in the application filed for amendment in I.A.No.477/2016 in



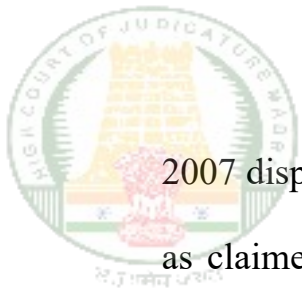
O.S.No.110 of 2007 on the file of District Munsif, Attur.

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2. Heard, Ms.V.Srimathi, learned counsel appearing on behalf of the second petitioner and Mr.K.Shakespeare, learned counsel appearing on behalf of the second respondent.

3. The learned counsel for the petitioner would submit that the petitioner had initially filed a suit for bare injunction in respect of the suit passage which has been interfered with by the respondents. In the said suit, an Advocate Commissioner came to be appointed who had filed a Report indicating that the suit passage is with the width of 2 feet to 3 feet at various places. However, it was the case of the petitioner in the suit that the width of the suit passage is 4 ½ feet. Hence, an amendment application was sought to be filed seeking for declaration in respect of the suit property, which came to be dismissed without considering the right of the petitioner by the order impugned herein. She would submit that if the amendment is not ordered as prayed for it would only affect the right of the petitioner for the suit property.

4. Countering his arguments, Mr.K.Shakespeare, learned counsel appearing for the second respondent would submit that in the suit filed by the petitioner, the respondent had filed a written statement as early as in the year



2007 disputing the width of the passage to be only 1 ½ to 2 feet and not 4 ½ feet as claimed by the petitioner. The Advocate Commissioner had also filed his Report and only after the filing of the Advocate Commissioner's Report, the petitioner had attempted to seek for a declaration by way of amendment to the claim. He would submit that the Court below finding that the prayer for declaration as prayer for by way of an amendment could have been filed even at the initial stage, but had been filed belatedly is only to drag on the proceedings.

5. Further relying upon the order of this Court in CRP No.1896 of 2024 dated 22.08.2025 would contend that in case where the claim made by the plaintiff in the suit is disputed in a written statement and the said amendment is not filed within a period of three years, then the same is clearly barred by law of limitation. The Advocate Commissioner's Report cannot be treated to be the starting point of limitation and therefore, the Report of the Advocate Commissioner cannot be the beginning of the limitation for filing the application for declaration. Hence, he would seek dismissal of the Revision Petition.

6. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.



7. This Court in its order dated 23.02.2022 has recorded as follows:-

“The suit was originally filed seeking injunction with respect to a pathway. There were two defendants / father and son. The defendants filed a written statement, questioning the nature of the land described as pathway. A further plea was taken questioning the title of the plaintiff to seek an order of injunction. The said written statement was filed in the year 2007.

2. Thereafter, an Advocate Commissioner appears to have visited the property and filed a report in which, the Advocate Commissioner had stated that the pathway lies within the land of the defendants. The plaintiff then filed an application seeking declaration and title.

3. The plaintiff should file an application seeking declaration of title on the basis of their title and not on the basis of the report of an Advocate Commissioner, which report is only to assist the Court.

4. It must be kept in mind that the suit was only for injunction and that scope cannot be widened primarily on the report of a 3rd party / Advocate Commissioner. If the Advocate Commissioner had extended his warrant then, he can very well be cross-examined during the course of the Trial.

5. One of the respondents herein appears to have died but is survived by another respondent, who is his legal heir.



6.If the written statement was the basis for filing application seeking declaration of title then the application seeking amendment was filed far far later from the date of filing the written statement.

List the matter on 09.03.2022.”

8. This Court had recorded that the petitioner to be at liberty to always cross-examine the Advocate Commissioner during the course of the trial and that the plaintiff cannot be allowed to file an application seeking for declaration on the basis of the Report of the Advocate Commissioner as such Report is only to assist the Court.

9. This Court do not find any reasons to take a different view than what was recorded by this Court in its order dated 23.02.2022. Further, as rightly pointed out by the learned counsel appearing for the respondent, that the respondent has disputed the width of the passage in his written statement which had been filed as early as in the year 2007. In such an event, by applying the judgement that has been relied upon by the learned counsel for the respondent which had further relied upon the Hon'ble Apex Court judgement in the case of ***Kewal Krishnan Vs Rajesh Kumar and others***, reported in ***AIR 2022 SC 564***, it could be seen that the Hon'ble Apex Court has held the claim for declaration as sought to be amended is barred by the law of limitation and therefore, no such amendment shall also be permitted.



10. For the aforesaid reasons, this Court finds no merits in this Revision Petition and accordingly, the same stands dismissed. Consequently, connected miscellaneous petition is also closed. However, there shall be no order as to costs.

18-03-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GBA

To

1. The District Munsif Court, Attur.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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K.KUMARESH BABU, J.

GBA

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