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C.R.P.(NPD)NO.535 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 10 / 10 / 2025

ORDER DELIVERED ON: 28 / 11 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(NPD)NO.535 OF 2020

AND

C.M.P.NO.2788 OF 2020

K.Balakrishnan,
Konar Street,
Keezhakolathur Village – 621 704,
Ariyalur Taluk and District.

... Petitioner/Appellant/
Plaintiff

Vs.

1.Venkatachalam
Konar Street,
Keezhakolathur Village – 621 704,
Ariyalur Taluk and District.

2.The District Collector,
Ariyalur District.

3.The Tahsildar,
Collectorate Office,
Ariyalur.

... Respondents/Respondents
Defendants



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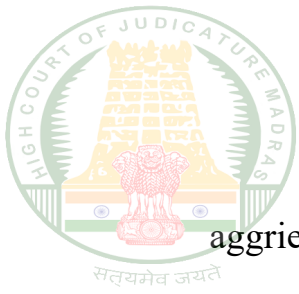
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PRAYER : Civil Revision Petition filed under Section 115 of Code of Civil Procedure, 1908, praying to set aside the Fair and Decretal Order dated December 02, 2019 made in I.A.No.2 of 2019 in A.S.No.14 of 2019 on the file of the Sub-Judge, Ariyalur.

For Petitioner	:	Ms.D.E.Anisree Sangavi
For Respondent-1	:	Mr.M.Ravindhar for Mr.N.Elaiyaraja for R1
For Respondents-2 & 3	:	Mrs.RAnitha Special Government Pleader

ORDER

The Revision Petitioner as the Plaintiff filed the Original Suit in O.S. No.346 of 2012 on the file of 'the Additional District Munsif, Ariyalur' ['Trial Court' for brevity] seeking mandatory injunction against the Defendants therein who are the respondents herein. Not being satisfied with the Trial Court's Judgment and Decree, the revision petitioner / plaintiff preferred the appeal in A.S. No.14 of 2019 before the 'the Principal Sub-ordinate Court at Ariyalur' (hereinafter referred to as the 'First Appellate Court'). In the Appeal Suit, the revision petitioner filed an Interlocutory Application under Order XXIII Rule 1 read with Section 151 of 'the Code of Civil Procedure, 1908' ['CPC' for short] in I.A.No.2 of 2019, which the First Appellate Court dismissed. Feeling



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aggrieved by the Dismissal Order passed in the Interlocutory

Application, this Civil Revision Petition has been filed.

2. For the sake of convenience, the parties will henceforth be referred to as per their array in the Original Suit.

3. The case of the Plaintiff is that the Suit Property measuring an extent of 0.00.55 Hectares (0.55 Ares) in Natham Old Survey No.520/2 (New Survey No.360/1 Part) situated in No.57, Keelakolathur Village, Ariyalur Taluk, originally belonged to Solai Konar, who is the Grandfather of the Plaintiff vide Sale Deed executed in the year 1930 and from the date of purchase, Solai Konar, plaintiff's father and plaintiff have been in enjoyment of the Suit Property. In fact, they have also renovated the house found in a portion thereof. While so, the First Defendant wantonly encroached a portion of the Northern side of the Suit Property by dumping haystack, etc. During the month of September 2012, he erected an iron-mesh fence by putting up stone pillars. Hence, the Plaintiff filed a suit for mandatory injunction.



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4.The First Defendant filed Written Statement and contested the Suit. The Trial Court dismissed the Suit *inter alia* on the ground that, despite the Defendants denying the title of the Plaintiffs, the Advocate Commissioner in his Ex-C.1 and Ex-C.2 – Report and Plan has not stated that the first defendant has encroached upon any portion of the Suit Property; that the plaintiff did not measure the Suit Property; that without a prayer for declaration, mandatory injunction cannot be granted.

5.Feeing aggrieved by the Judgment and Decree of the Trial Court, the Plaintiff preferred an appeal before the First Appellate Court under Section 96 of CPC. In the Appeal Suit, the Plaintiff filed an Interlocutory Application in I.A.No.2 of 2019 under Order XXIII Rule 1 read with Section 151 of CPC, seeking permission of the First Appellate Court to withdraw the Original Suit with a liberty to file a fresh Suit on the same of action, by stating that there is a formal defect in the plaint - the Suit Property is classified as Natham, but due to oversight, it has been stated as Natham Poramboke in the Plaint and therefore, the defect needs to be rectified.



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6.The First Appellate Court after hearing both sides and after considering the facts and circumstances of the case, held that the Plaintiff could have amended the plaint before the Trial Court itself and the alleged defect is not a formal defect. Accordingly, the First Appellate Court dismissed the petition.

7.Feeing aggrieved by the Dismissal Order, the Petitioner therein / Plaintiff has filed this Civil Revision Petition.

8.Ms.D.E.Anisree Sangavi, learned Counsel appearing for the Revision Petitioner submitted that the Suit Property is classified as 'Natham' but due to oversight, it has been stated as 'Natham Poramboke' in the Plaint. The Trial Court without considering the facts and circumstances of the case, wrongly dismissed the Suit. The Plaintiff is required to submit precise pleadings concerning the nature of Suit Property. Hence, the Plaintiff filed a petition to withdraw the Suit and to file a fresh Suit for the same cause of action, during the pendency of the appeal. If this petition is allowed, no prejudice would be caused to the First Defendant. The First Appellate Court without considering the facts and circumstances of the case, erred in dismissing the Petition.



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Accordingly, she prayed to allow this Civil Revision Petition and to set aside the Dismissal Order of the First Appellate Court and to allow the Interlocutory Application in I.A.No.2 of 2019.

9.Per contra, Mr.M.Ravindhar, learned Counsel appearing for the First Respondent submitted that the First Defendant has categorically pleaded that the Plaintiff has no title over the Suit Property. Despite the categorical stand taken by the First Defendant, the Plaintiff did not amend the plaint to seek a relief of declaration. Hence, in the appeal stage, the petitioner's prayer cannot be entertained. Further, if the Plaintiff wants to amend the plaint, he can amend the plaint even in the appellate stage subject to the provisions of law, without the need to file a fresh suit. The First Appellate Court has rightly dismissed the application filed by the Plaintiff under Order XXIII Rule 1 and Section 151 of CPC. If the petition is allowed, it could cause prejudice to the First Defendant's right accrued in the trial. Accordingly, he prayed to dismiss this Civil Revision Petition.

10.Mrs.R.Anitha, learned Special Government Pleader appearing for Respondents 2 and 3 submitted that it is an inter-se dispute between



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the plaintiff and the first defendant and that the Respondents 2 and 3 are only formal parties.

11. This Court has considered both side submissions and perused the materials annexed in the typed set of papers. There is no dispute regarding the factual position narrated above, so there is no need to incorporate it again in detail.

12. The plaintiff has pleaded that the Suit Property is situated in Natham land. The first defendant's Property is situated towards the Northern side of the Suit Property, which is Natham Poramboke. The first defendant denied the right and title of the plaintiff in respect of the Suit Property and the plaintiff has not sought for a relief of declaration. The Trial Court after considering both sides, dismissed the Suit by *inter alia* observing that the Plaintiff did not amend the plaint and seek relief of declaration.

13. In a Suit for mandatory injunction, it is not always necessary to seek the relief of declaration. If the plaintiff's title over the Suit Property is clear and unambiguous, the plaintiff can succeed the case without



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seeking the relief of declaration. Further, in appropriate cases, the plaint

can be amended even in the appellate stage. Further, the only kind of defect which attracts Order XXIII Rule 1 of CPC is formal defects. Formal defect means a defect which cannot be cured by way of amendment like misjoinder of parties, non-payment of proper Court Fee, failure to disclose cause of action, etc. As stated above, the plaintiff can very well amend the plaint and cure the alleged defect and hence, it is not a formal defect. Therefore, the plaintiff has not made a case under Order XXIII Rule 1 of CPC.

14. The First Appellate Court has rightly appreciated the facts and circumstances of the case and dismissed the Interlocutory Application in I.A.No.2 of 2019. Hence, this Court does not find any irregularity or illegality in the Order passed by the First Appellate Court. Therefore, this Civil Revision Petition does not have any merit and deserves to be dismissed.

15.In the result, this Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, there shall be no



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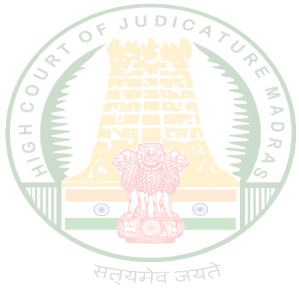
order as to costs. Consequently, connected Civil Miscellaneous Petition
is closed.

28/11/2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

- 1.The Principal Sub-ordinate Court,
Ariyalur.
- 2.The District Collector,
Ariyalur District.
- 3.The Tahsildar,
Collectorate Office,
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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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