

C.R.P.(MD) No.1114 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(MD) No.1114 of 2023
and
CMP(MD) No.5364 of 2023**

V.Kannammal

... Petitioner

vs.

1.M/s. Harikardwelling Private Limited,
Trichy – 1, Represented by its Director -
T. Viswanathan

2.K.Murugesan

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.02.2023 made in I.A. No. 1 of 2022 in O.S. No.1111 of 2015 on the file of the Principal District Munsif Court, Trichy.

For Petitioner : Mr.S.I.Muthiah

For R1 : Mr.K.S.Vamsidhar

For R2 : No appearance



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ORDER

This Civil Revision Petition challenges the order dated 09.02.2023 passed in I.A.No. 1 of 2022 in O.S.No.1111 of 2015 on the file of the Principal District Munsif Court, Trichy.

2.The Civil Revision Petitioner is the plaintiff in the suit. He presented O.S.No.1111 of 2015 seeking the relief of permanent injunction, restraining the second defendant, his men, servants., and etc from interfering with his peaceful possession and enjoyment of the property. Pending suit, he filed an amendment application, which came to be dismissed. Hence, this Revision.

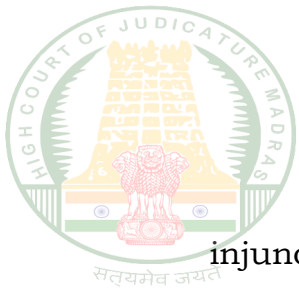
3.The case of the plaintiff is that he purchased the property from the first defendant by way of a registered sale deed dated 29.03.2012. The plot that he had purchased bears Plot No.13. The said plot is the suit schedule property. The second defendant had purchased Plot Nos.72 and 73 from a different owner, by name, Chitra on 06.05.2015. As both the properties fall in old SF.No.153/1C/118, the plaintiff alleged that the second defendant is attempting to interfere with his possession. Hence, the suit.



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WEB COPY 4.Summon was served on the defendants. The second defendant filed a written statement pointing out that the predecessors in title of the plaintiff are totally different from the predecessors-in-title of the defendant and that he has nothing to do with Plot.No.13 purchased by the plaintiff. He accepted that he had purchased Plot.Nos.72 and 73 in SF.No.153/1C/117 part & 153/1C/118 part comprised in New.T.S.No.289, ward-AU, Block 13. He pleaded that the derivation of title by the plaintiff and second defendant are different and that the property of the plaintiff is situated elsewhere. On these and other pleadings, he sought dismissal of the suit.

5.Pending suit, the plaintiff took out an application for appointment of an Advocate Commissioner in I.A.No.628 of 2015. The said application was allowed. An advocate Commissioner was appointed. He also submitted a report, together with a plan on 17.06.2016. The plaintiff, on perusal of the Advocate Commissioner's report, came to understand that the second defendant had encroached upon a portion of the plaintiff's property and put up constructions. Hence, she moved an application for amendment in I.A.No.1 of 2022, seeking to add an additional prayer of mandatory



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injunction, calling upon the second defendant to remove the superstructures put up over the area marked 'ABCD' in the 'EFGH' portion of the Advocate Commissioner's Plan.

6.This application was resisted by the first respondent herein. The first respondent, who is the vendor of the plaintiff, took a stand that the petitioner is abusing the judicial process in an attempt to encroach upon the defendant's property. It was further pointed out that the Advocate Commissioner's report has not been marked before the Court. It was also pleaded that the petitioner should seek the relief of recovery of possession and not mandatory injunction.

7.Curiously enough, a plea was taken that a suit for mandatory injunction should be filed within a period of 3 years. The second defendant, who would have been aggrieved, in case the amendment had been ordered, remained *ex parte*.

8.The learned trial Judge took up the application on the basis of the counter filed by the first respondent. He concluded that the application had been filed with a delay and also that the plaintiff should only seek for declaration and recovery of possession and



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consequently, dismissed the petition. Aggrieved by the same, the plaintiff is on Revision before me.

9.I heard Mr.S.I.Muthiah for the petitioner and Mr.K.S.Vamsidhar for the first respondent. The second respondent, though served, has not troubled himself to enter appearance through a counsel nor is present before the Court to oppose this Revision.

10.The simple case of the plaintiff is that she had purchased the property from the first defendant and has been in possession and enjoyment of the same. A perusal of the pleading shows that, when the suit was filed, the property was only shown as a plot. In other words, on the date of presentation of the plaint, the land was a vacant land.

11.Let me now deal with the first ground given by the learned Judge to dismiss the amendment application. The learned Judge has held that the plaintiff ought to have sought for declaration of title with the relief of recovery of possession.



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12.It is not in all circumstances that a party should sue for the expensive relief of declaration of title. Declaration of title is necessary, when a cloud is cast over the title of the plaintiff by the defendant, either before the suit or by way of a written statement. Such a cloud arises when the defendant either sets up a title in himself or in a third party.

13.A perusal of the written statement of the second defendant shows that he has absolutely no interest over the property of the plaintiff. On the contrary, he has taken a stand that the plaintiff's property is situated elsewhere and it has nothing to do with the plots that he has purchased from Ms.Chitra. When no cloud is cast over the title of the plaintiff, calling upon him to sue for declaration of title is contrary to the position of law laid down by the Supreme Court in **Anathula Sudhakar Vs. P.Buchi Reddy, (2008) 4 SCC 594.**

14.Proceeding to the next point, I should point out that the construction has been put up pending the suit. This is clear from a perusal of the Advocate Commissioner's report, dated 17.06.2016. When on the date of presentation of the plaint, there has been no construction, the plaintiff has exercised the option to sue only for

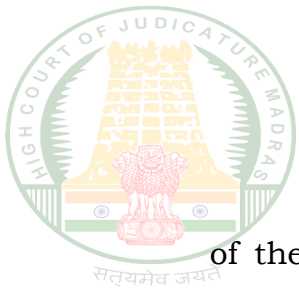


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permanent injunction. When a construction is made pending the suit, a party is entitled to invoke Section 39 of the Specific Relief Act and seek for mandatory injunction.

15. Under Section 39 of the Specific Relief Act, a mandatory injunction ensues under two circumstances. First, to prevent the breach of an obligation and second, when the Court is capable of enforcing the performance of certain acts. If after trial, the Court comes to a conclusion that the construction is in fact on the plaintiff's property and the same had come up pending litigation, even without a prayer for mandatory injunction, Courts have settled the position of law that a relief of mandatory injunction can be moulded by the Court (see, **Palaniammal Vs. Pechimuthu, (1991) 1 L.W. 371**). Acts of parties pending the litigation cannot be taken advantage of by them and thereby, defeat a legitimate claim if so proved (see, **Rajaram Narayan Vs. Rajaram, AIR 1996 MP 12; Kasinadhuni Kumareswara Rao Vs. Kaivaram Rajyalakshmana and others, (1970) 1 AP LJ 309**)

16. On the aspect of delay, the learned Judge could have imposed a cost on the plaintiff. The first defendant, being the vendor



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of the plaintiff, under Section 55 of the Transfer of Property Act, is duty bound to ensure conveyance of proper title to his purchaser.

Hence, he would not be entitled to cost. Insofar as the second defendant is concerned, as pointed out above, he has not even troubled the trial Court by way of a counter nor has he approached this Court to oppose this Revision.

17.In the light of the above discussions, I am of the view that the learned trial Judge having failed to consider the Advocate Commissioner's report or the written statement filed by the second defendant, which do not cast a cloud over the title of the plaintiff, had arrived at an erroneous conclusion. The order of the learned trial Judge deserves to be set aside and is accordingly, set aside.

18.The Civil Revision Petition stands allowed. The amendment sought for in I.A. No. 1 of 2022 in O.S. No.1111 of 2015 is ordered. The amended plaint is to be filed within a period of two weeks from the date of uploading of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No

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The Principal District Munsif, Trichy.



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V. LAKSHMINARAYANAN, J.

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