

C.R.P.(MD).No.1118 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2026

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.1118 of 2026
and C.M.P(MD).No.5329 of 2026

1.Pushpam
2.Raja Boopathy
3.Kumara Boopathy

... Petitioners

Vs.

S.Sumitha

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, to set aside the fair and decreetal order passed by the learned Principal District Munsif, Sivagiri, Tenkasi District, in I.A.No.01 of 2025 in O.S.No.24 of 2013 on 23.02.2026 and allow this civil revision petition.

For Petitioner : Mr.M.Jothi Basu

ORDER

Pursuant to the order of this Court dated 15.06.2026, the learned District Munsif at Shencottah, who holds full additional charge of the Principal District Munsif, Sivagiri, Tenkasi District, had submitted a report dated 19.06.2026. A perusal of the report shows that the application under Order VI Rule 17 of the Code of Civil Procedure had been filed after the defendants had been set *ex-parte*. The report further adds that amendment application was allowed on 05.02.2020, without issuing notice to the

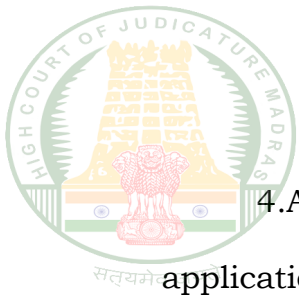


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defendants. This Court had issued notice in the revision on 20.04.2026. The respondent has been served on 08.06.2026. There is no appearance on behalf of the respondent/ plaintiff. Mr.M.Jothi Basu is ready. Hence, the revision is heard and disposed of finally.

2.O.S.No.24 of 2013 was presented on the file of the Principal District Munsif Court at Sivagiri. The suit was one for declaration, permanent and mandatory injunction. It is the case of the plaintiff that the property belonged to her grandfather, one Karuppiyah. The said Karuppiyah had settled the property in favour of the plaintiff on 24.05.2010. She further urged that the defendants had approached the plaintiff to alienate the property in their favour. As she resisted the demand of the defendants, she came forth with the suit for the aforesaid reliefs.

3.The suit was taken on file and summons were issued to the defendants. Summons were served and the defendants 2 and 3 did not contest the same. Consequently, they were called absent and set *ex-parte* on 30.06.2016. Insofar as the first defendant is concerned, she received the summon on 14.03.2013 but did not contest the suit. Therefore, she was set *ex-parte* on the very same day.



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4. After the defendants had been set *ex-parte*, the plaintiff filed two applications, one for appointment of an Advocate Commissioner and another application for amendment of pleadings. The amendment application has been allowed by the Trial Court, as it is clear from the report of the learned District Munsif Shencottah, on 05.02.2020. Unfortunately, summons in the application were not served on the defendants.

5. On coming to know of the decree granted to the amended prayer, the defendants filed an application to condone the delay in filing the application, accompanied by an application to set aside the *ex-parte* decree. The said application came to be dismissed by the trial Court by the impugned order. Hence, this revision.

6. It is the specific plea of Mr.M.Jothi Basu that prior to the grant of the amended relief, the plaintiff did not put the defendants on notice. He urges, while the defendants were set *ex-parte* with respect to the summons originally served, for the amended relief they had not been put on notice at all and that this is a serious error in the procedure followed by the trial Court. He further adds that the second petitioner was not in India at the relevant time and was working in the Islamic monarchy of Qatar. He states that the second petitioner came to India only in May-2025 and immediately,

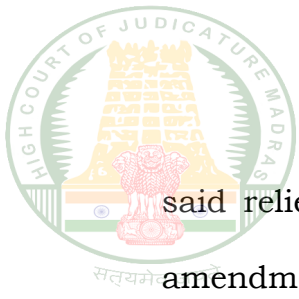


filed the application. He urged that the procedure that had been followed for service of summons itself is improper as the summons had been served only via affixture insofar as defendants 2 and 3 are concerned and it was only the first defendant, who had been put on notice.

7.I have carefully considered the submission of Mr.M.Jothi Basu. I have gone through the records.

8.When the suit was originally presented, the relief of mandatory injunction had not been sought for. What had been sought was only a suit for declaration and permanent injunction. Summons had been served on the defendants on this plaint alone. The purpose of service of summons is to put the defendants on notice of the case of the plaintiff. When the plaint is substantially altered from the relief of permanent injunction into a relief of mandatory injunction, the defendants, who had originally remained *ex-parte*, ought to have been put on notice of such an amendment.

9.A person, who is arrayed as a defendant, might not have any issues with respect to the suit as it originally stood. Having received the summons, he might have decided not to trouble himself with opposing the relief sought in the suit. When the plaintiff amends the plaint and the Court grants the



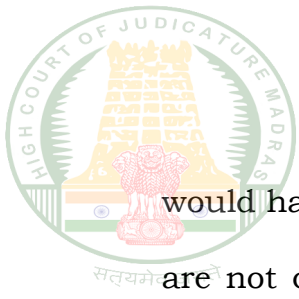
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said relief, the Court ought to have put the defendants on notice on the amendments sought for. This is especially so since the relief that was granted by the trial Court finally is the executable decree of mandatory injunction (**see, Ramnik Vallabhdas Madhvani v. Taraben Pravinlal Madhvani, AIR 2004 SC 1084 and flight centre travels Pvt., Ltd., V. Rahul Nath, (2012) 190 DLT 367**).

10. When the amended plaint had not been served on the defendants, it has to be treated akin to a case, where summons has not been served on the defendants. Hence, it is only the date of knowledge of the *ex-parte* decree that would have to be considered as the commencement of the period of limitation for filing an application to set aside the *ex-parte* decree.

11. From the report of the Court it is clear that the applications had been allowed on 05.02.2020 and the suit had been decreed *ex-parte* on 19.02.2021. That being the position, I am not able to sustain the impugned order only on the ground that the defendants had not been put on notice insofar as the amended prayer is concerned.

12. While condoning the delay and setting aside the *ex-parte* decree, this Court has to take into consideration the difficulty which the plaintiff



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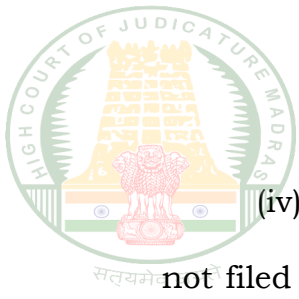
would have been put on account of the pendency of the suit. The petitioners are not cringing for pennies, they are working abroad. The defendants are succeeding only on account of the error committed by the Court in not putting the defendants on notice prior to decreeing the suit on the basis of the amended prayer. Hence, the defendants will have to bear the cost that the plaintiff would have incurred on account of the proceedings that took place from 2020 till 2026.

13.In result, this Civil Revision Petition is allowed on the following conditions:

(i) The order passed by the learned Principal District Munsif, Sivagiri, in I.A.No.1 of 2025 in O.S.No.24 of 2013 dated 23.02.2026, is hereby set aside on the condition that each of the defendants will pay the plaintiff a sum of Rs.10,000/- within a period of four weeks from today(i.e., 22.06.2026).

(ii)On payment of the aforesaid cost, the learned Trial Judge shall set aside the *ex-parte* decree and on the very same day, ensure that summons are served on the defendants on the amended plaint and four weeks' time is granted to them to file their written statement.

(iii)Once the written statements are filed, the Court shall expedite the suit at all stages.



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(iv) In case, the aforesaid cost is not paid or if the written statement is

not filed within the time fixed by this Court, this revision will automatically stand dismissed without further notice.

No costs. Consequently, connected Miscellaneous Petition is closed.

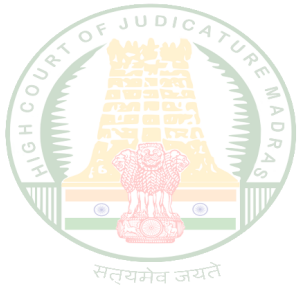
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NCC : Yes / No
Index : Yes / No
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To

1. The Principal District Munsif, Sivagiri, Tenkasi District.

2. The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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V.LAKSHMINARAYANAN,J.

Rmk

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