

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 08.11.2019****CORAM:****THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH****CRP. (MD). No. 1427 of 2012 (PD)****WEB COPY**

1. J. Prahalathan (Died)

2. P. Yelumalai

(Second petitioner is brought on record as legal representative of the deceased / sole petitioner as per order of this Court dated 08.11.2019 in C.M.P. (MD). Nos. 10331 to 10333 of 2019 in C.R.P. (MD). No. 1427 of 2012) ... Petitioners

Vs.

1. Dharmambal

2. Kathirvel

3. Dhanavel

4. Subburaj

5. Sengamalam

6. The Commissioner,
Thanjavur Municipality,
Gandhiji Road, Thanjavur.

... Respondents

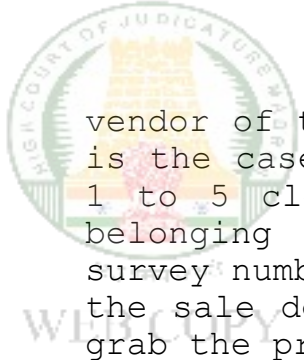
PRAYER: This Petition filed under Article 227 of the Constitution of India to call for the records in I.A.No.274 of 2011 in O.S.No.291 of 2010, from the file of the District Munsif, Thanjavur, dated 24.01.2012.

For Petitioner	: Mr.V.K.Vijayaraghavan
For R-1 to R-4	: No Appearance
For R-5	: Dismissed
For R-6	: Mr.J.Parekh Kumar

O R D E R

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the application filed by the petitioner for appointment of an Advocate Commissioner in order to inspect the property and to note down the physical features and measure the property with the assistance of a Surveyor.

2. The petitioner is the plaintiff in the suit that was filed against the respondents seeking for the relief of declaration, mandatory injunction and recovery of possession. The case of the petitioner is that both in the title deed as well as in the entries that are found in the Resettlement Register, the property has been perfectly identified with the survey number and it is shown that the vendor of the plaintiff was the owner of Survey No.659 and the



vendor of the defendants 1 to 5 was the owner of Survey No.661. It is the case of the petitioner that the title deed of the defendants 1 to 5 clearly shows that the northern boundary is the property belonging to the petitioner / plaintiff. However, clandestinely survey number of the plaintiff viz., Survey No.659 was also added in the sale deed and thereby, the defendants 1 to 5 are attempting to grab the property of the plaintiff.

3. The petitioner had filed the application for appointment of an Advocate Commissioner on the ground that during the pendency of the suit, the defendants 1 to 5 are attempting to put up a construction in the property by taking advantage of their sale deed. Therefore, even if the final relief is granted in favour of the plaintiff there has to be a clear evidence before the Court, identifying the amount of encroachment that has taken place into the property of the plaintiff. This can be ascertained only if the Advocate Commissioner measures the property with the help of the Surveyor and only then both the properties in Survey Nos.659 and 661 can be perfectly demarcated.

4. The respondents 1 to 5 have already been served with the notice and their names are also printed in the cause list and there is no appearance for the respondents. The sixth respondent is only a formal party in this case.

5. The Court below has dismissed the application mainly on the ground that the petitioner has filed a suit for declaration, mandatory injunction and recovery of possession and if he succeeds in the suit, he will get back his property and therefore, there is no requirement for the appointment of an Advocate Commissioner.

6. In the considered view of this Court, the specific plea that has been raised by the petitioner is that a construction has now been put up by the defendants 1 to 5 during the pendency of the suit which has also encroached upon the property of the plaintiff. Therefore, only if the property is measured with the help of the Surveyor, it can be ascertained as to what is the total measurement of both the properties in Survey Nos.659 and 661 and to what extent the construction has come into the property belonging to the plaintiff in Survey No.659. This piece of evidence by way of an Advocate Commissioner's report will be of use to the Court, if and when the Court finds that the plaintiff is the owner of the property in Survey No.659 and while granting the relief of mandatory injunction, it can rely upon the report of the Advocate Commissioner and accordingly, grant the relief. Therefore, it is important for the Court below to have some materials in this regard and the report of the Advocate Commissioner will be of great use to the Court below. The Court below failed to take note of the same. Therefore, the fair and final order passed by the Court below requires interference.



7. In view of the above discussion, the fair and final order passed by the Court below in I.A.No.274 of 2011 dated 24.01.2012, is hereby set aside. The Court below is directed to immediately appoint an Advocate Commissioner to visit the property and measure the property with the help of a Surveyor and get a report regarding the same. The petitioner will have to incur the entire expenses for the appointment of an Advocate Commissioner. It is made clear that the report of the Advocate Commissioner will also be a piece of evidence before the Court below and it will not be a determining factor and the Court below has to independently decide the rights of the parties.

8. In the result, the Civil Revision Petition is accordingly allowed and the Court below is directed to complete the proceedings in O.S.No.291 of 2010, within a period of four months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

Tsg

To

1.The District Munsif, Thanjavur.

2. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

CRP. (MD) .No.1427 of 2012 (PD)

08.11.2019

VB(26.11.2019) 3P 4C