



CRP (MD) Nos.2402, 2403 and 2404 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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| <b>Reserved on</b>   | <b>14.09.2023</b> |
| <b>Pronounced on</b> | <b>17.11.2023</b> |

CORAM

**THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) Nos.2402, 2403 and 2404 of 2022  
and  
C.M.P.(MD) Nos.11615, 11620 and 11623 of 2022

M.Munian

... Revision Petitioner in  
all CRPs

Versus

- 1.N.Gunasekaran
- 2.G.Gokul Ajith
- 3.Prakash Pandey
- 4.Tirupathi
- 5.P.Ramalingam
- 6.Sundarapandy
- 7.R.Neelavathy
- 8.S.Muthulakshmi



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9.K.Suresh

10.The President,  
Uthangudi Panchayat,  
Madurai (North Taluk),  
(Now under) The Commissioner,  
Madurai Corporation,  
Madurai (East Taluk).

11.R.Thennarasu

12.R.Pandiyammal

... Respondents in  
all CRPs

**Prayer in CRP.(MD)No.2402 of 2022:** The Civil Revision Petition is filed under article 227 of the Constitution of India, to call for the records relating to the order passed in I.A.No.357 of 2022 in O.S.No.184 of 2008 dated 10.11.2022 on the file of the District Munsif, Madurai Taluk, Madurai and set aside the same.

**Prayer in CRP.(MD)No.2403 of 2022:** The Civil Revision Petition is filed under article 227 of the Constitution of India, to call for the records relating to the order passed in I.A.No.358 of 2022 in O.S.No.184 of 2008 dated 10.11.2022 on the file of the District Munsif, Madurai Taluk, Madurai and set aside the same.

**Prayer in CRP.(MD)No.2404 of 2022:** The Civil Revision Petition is filed under article 227 of the Constitution of India, to call for the records relating



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to the order passed in I.A.No.359 of 2022 in O.S.No.184 of 2008 dated 10.11.2022 on the file of the District Munsif, Madurai Taluk, Madurai and set aside the same.

For Revision Petitioner : Mr.M.Munian  
(in all CRPs) Party in Person

For Respondents : M/s.G.Vidhya Maheswaran for R1  
(in all CRPs) : Mr.S.Chandrasekaran for R5

R2 to R4 and R6 to R12 : Given up

### **COMMON ORDER**

These Civil Revision Petitions have been filed against the orders passed by the learned District Munsif, Madurai Taluk, Madurai in I.A.Nos. 357, 358 and 359 of 2022 in O.S.No.184 of 2008, dated 10.11.2022.

2. The Revision Petitioner/Plaintiff filed the above suit in O.S.No.184 of 2008 for declaration of title and recovery of possession in respect of “B” schedule property.

3. According to the Revision Petitioner, the brief case of the facts are as follows :



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(a). The Revision Petitioner is the absolute owner of 1.05

acres of agricultural land comprised in Survey Nos.29/1 (84 cents), 30/3 (16 cents) and 29/2 (cents) which are situated in Elanthaikulam Village, Madurai East Taluk, Madurai District. Those lands were fertile agricultural lands and they were doing double crop irrigation through Mullai Periyar Dam water. They were doing farm till 2007 and could not continue the same in view of the mischief committed by the 1<sup>st</sup> Respondent herein by destroying the northern ridge.

(b). The 1<sup>st</sup> Respondent herein owned lands on the northern side of the Revision Petitioner's property. On 04.12.2007 at about 07.00 AM, the Revision Petitioner found that the 1<sup>st</sup> Respondent along with his henchmen trespassed into his land, destroying the northern side ridge running to 562 feet, removed the survey stones of his northern boundary and encroached 5 feet on the northern side of his land by extending the 1<sup>st</sup> Respondent's southern boundary.

(c). The 1<sup>st</sup> Respondent and his henchmen did not heed to his hues and cries to stop the illegal activities, the Revision Petitioner



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immediately went to Karuppayeoorani Police Station and lodged a complaint with them. The police immediately came to the spot and asked the 1<sup>st</sup> Respondent and his men to stop the activities and to appear for enquiry. However, they did not oblige the same. Subsequently, the Revision Petitioner's complaint was transferred to Othakadai Police Station due to the jurisdictional issue. However, the Othakadai Police acted hand in glove with the 1<sup>st</sup> Respondent, closed the Revision Petitioner's complaint as mistake of fact. Then, the Revision Petitioner filed protest petition before the Judicial Magistrate, Melur which was converted into C.C.No.79 of 2011 and trial went on. The learned Judicial Magistrate by his order dated 07.08.2014 acquitted the 1<sup>st</sup> Respondent against which the Revision Petitioner filed Criminal Appeal No.132 of 2017 before the 5<sup>th</sup> Additional District Sessions Court, Madurai. The Appellate Court vide its order dated 13.09.2019 held that the order passed by the Judicial Magistrate in C.C.No.79 of 2011 suffers from non-application of mind. Hence, the same was set aside and the case was remanded back for fresh disposal. Challenging the order passed by the Appellate Court, the 1<sup>st</sup> Respondent has filed CrI.RC(MD).No.42 of 2020 and the same is pending before this Court.



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(d). The Revision Petitioner filed the above OS.No.184 of 2008 before the learned District Munsif, Madurai Taluk seeking for declaration of title and recovery of possession in respect of the Scheduled property (The portion encroached by the 1<sup>st</sup> Respondent). Since the 1<sup>st</sup> Respondent divided the land into plots and sold the same to different persons pending the above suit, the Revision Petitioner filed necessary petitions to implead the Respondents 3 to 11 herein. The said impleading and amendment petition in I.A.Nos.130 of 2015 and 460 of 2016 were allowed and necessary amendments were carried out.

(e). On 11.07.2018 in I.A.No.518 of 2008 for interim injunction, the learned District Munsif was pleased to grant an order of status-quo which was made absolute subsequently. However, defying the said order, the 1<sup>st</sup> Respondent proceeded to sell the plots including the land covered under the bare Schedule property for which the status-quo was granted.

(f). The Revision Petitioner filed I.A.No.623 of 2011 in the above suit for appointment of Advocate Commissioner assisted by a



Surveyor to inspect the suit properties and to take measurement and to submit a sketch. The said petition was allowed and Thiru.R.Gurusev was appointed as Advocate Commissioner. He submitted his report in October 2013. In the said report, he did not mention anything about the measurement of either of the petitioner's land or the land belonging to the 1<sup>st</sup> Respondent. He simply by relying on the sketch prepared by the Surveyor opined that the 1<sup>st</sup> Respondent has encroached an extent of 42 Sq.ft. in the Revision Petitioner's land. It is to be noted that absolutely no details with regard to the survey, measurement, four boundaries and extension of land were mentioned by the Advocate Commissioner in his report. Instead he had simply mentioned that 42 sq.ft has been encroached as per the sketch of the Surveyor.

(g). Since the Advocate Commissioner did not discharge his functions as per the warrant, immediately the Revision Petitioner filed detailed objections to his report. Further, the Revision Petitioner's filed I.A.No.556 of 2013 to appoint 2<sup>nd</sup> Commissioner for measurement of the land. However, the said IA was dismissed by order dated 25.11.2014 for the reason that the Revision Petitioner did not take any steps either to set aside the Commissioner's report nor Revision Petitioner took any steps to cross



examine the Advocate Commissioner.

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(h). The Revision Petitioner submitted that the pleadings were completed and the issues were settled and trial was commenced in the year 2018. The Revision Petitioner examined himself as PW-1 and eye-witness of the occurrence as PW-2. The 1<sup>st</sup> Respondent herein examined himself as DW-1 and the 5<sup>th</sup> Respondent has examined himself as DW-2. The Plaintiff's side evidence was over in January, 2019 itself. The Defendants' side evidence was commenced on February, 2019 and it was concluded only in August, 2022.

(i). The Revision Petitioner requested his counsel to take steps to summon and cross examine the Advocate Commissioner when the Plaintiff side evidence was closed. The Revision Petitioner's counsel informed him that the then learned Judge asked him to file necessary application to cross examine the Advocate Commissioner after Defendant side evidence is closed. Therefore, the Revision Petitioner waited till the defendant side evidence to be closed. The Revision Petitioner moved the above I.A.No.357, 358 and 359 of 2022 to re-open the Plaintiff's side evidence, to summon the Advocate Commissioner and the Surveyor for cross



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examination on 08.08.2022. However, the learned Judge was pleased to dismiss the above applications by stating that the suit is of the year 2008 and despite several opportunities were given to the Revision Petitioner, he did not take any steps to file these applications earlier. The reasons assigned by the learned Judge to dismiss the above application are perverse to the facts and out come of non-application of mind. Therefore, the same is liable to be set aside. In the above circumstances, the Revision Petitioner has filed this Civil Revision Petition challenging the order passed in I.A.No.357 of 2022, dated 10.11.2022.

4. The Revision Petitioner would further submits that it is the duty of the Court that whenever the Commissioner's report is objected, the Trial Court has to take evidence on the objection to the Commissioner's report and pass orders in accordance with law. He would further submits that the Commissioner is not a competent authority to determine the conclusion of encroachment and the only course available is to proceed with the examination of the Commissioner. However, the Trial Court failed to consider the above aspects. Though, the Plaintiff filed the above application



to reopen and recall the Plaintiff side evidence, the Trial Court dismissed the said application stating that the petitioner is attempting to drag on the proceedings. The Trial Court failed to consider that the report of the Advocate Commissioner is an evidence as per the Order 26 Rule 10(2) of Code of Civil Procedure. The bare perusal of the Advocate Commissioner's report and the Surveyor's report shows that no measurement/survey was conducted by them as per the warrant issued. He would further submits that the evidence of DW1 is totally contrary to what was stated by Advocate Commissioner in his report. DW1 has marked the Advocate Commissioner's report as Exhibit on his side. Therefore, in the above circumstances it is absolutely necessary for the Revision Petitioner to summon and cross examine the Advocate Commissioner and the Surveyor to elicit the real facts relating to the measurement conducted by them and the physical features of the property in dispute.

5. On the other hand, the learned counsel appearing for the Respondents 1 and 5 would submits that the intention of the Revision Petitioner is only to drag on the proceedings and therefore, the Trial Court



has rightly dismissed the application filed by the Revision Petitioner which calls for no interference.

6. Heard on both sides and perused the records.

7. The contention of the Revision Petitioner is that the Advocate Commissioner did not discharge his function as per the warrant. According to him, the Advocate Commissioner was appointed to inspect and measure the suit property with the aid of the Surveyor. However, in his report, the Advocate Commissioner failed to mention about the measurement of the lands belonging to the Petitioner and the first Respondent. He had simply relied on the sketch prepared by the Surveyor which pointed out that the first Respondent had encroached to an extent of 42 Sq.ft. in the lands of the Revision Petitioner. There was no details with regard to the survey, measurement, four boundaries and extension of land in the report filed by the Advocate Commissioner. The Revision Petitioner would submit that being a lawful owner of the property described in bare Schedule which has been trespassed and encroached by the first Respondent, he is entitled to get the



appropriate relief and see that suit disposed at the earliest. Therefore, the findings of the Trial Court while dismissing the application stating that said application was filed only to drag on the proceedings is unsustainable.

8. The specific contention of the Revision Petitioner is that the first Respondent has encroached and trespassed into his land destroying the Northern ridge running to 562 feet by removing the survey stones on the northern boundary of the Revision Petitioner and encroached 5 feet of the northern side land by extending its southern boundary. He had also preferred complaint about this to the concerned Police Station. He had also filed his objection to the report filed by the Advocate Commissioner.

9. According to the Revision Petitioner, the Advocate Commissioner in his report had simply stated that the first Respondent had encroached to an extent of 42 Sq.ft. in the lands of the Revision Petitioner. However, on perusal of the report, it is seen that no details were found with regard to the survey, measurement, four boundaries and extension of land mentioned by the Advocate Commissioner. Therefore, it is necessary for the Revision



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Petitioner to examine the Advocate Commissioner in this regard. No prejudice would be caused to the other side. Though this petition is filed belatedly, to have a fair adjudication, the Trial Court ought to have allowed the petition.

10. The Trial Court is directed to permit the Petitioner to reopen the case and issue summons to the concerned Advocate Commissioner for examination on the side of the Revision Petitioner. Those evidence shall be completed within a period of 15 days from the date of receipt of a copy of this order.

11. Accordingly, the orders passed by the Trial Court are set aside. These Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

**17. 11.2023**

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Index:Yes/No  
Speaking Order : Yes/No



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**K.GOVINDARAJAN THILAKAVADI,J.**

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To

The District Munsif,  
Madurai Taluk,  
Madurai

**ORDER MADE IN**

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and  
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