



CRP.No. 1430 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

Civil Revision Petition No. 1430 of 2023

and

Civil Miscellaneous Petition No. 9624 of 2023

1.S.Sathiyaseela
2.S.Nethaji
3.S.Gunasekaran
4.S.Ramamoorthy

...Petitioners/
Respondents 1 to 4/
Defendants 1 to 4

versus

The Residents of Annaikasthuribai Street,
Ashok Nagar, Arakkonam,
Represented by

1.L.Uthamaseelan, S/o. Lucky John
2.U.Sarala, W/o. Uthamaseelan

Nos.1 & 2 are residing at
No. 56/12, Thiruvallur Street,
Ashok Nagar, Arakkonam
Ranipet District.



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3.E.Lakshmi

4.Baby

5.Rajendiran

6.Sivakumar

...Respondents/
Petitioners/
Plaintiffs

7.The Registrar
Sub – Registrar Office
Arakkonam.

8.The Arakkonam Municipality
Represented by its Commissioner
Arakkonam, Ranipet District.

...Respondents 5&6/
Defendants 5&6

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal Order dated January 25, 2023 made in I.A.No.343 of 2022 in O.S.No.82 of 2022 on the file of District Munsif, Arakkonam, Vellore District.

For Petitioners	:	Mr.Jeremiah Gregory John
For Respondents 1 to 5	:	Mr.K.Venkateshwaran For M/s. M. Sathish Kumar
For Respondent-6	:	No Appearance
For Respondent-7	:	Mr.M.Murali Government Advocate
For Respondent-8	:	Mr.K. Mohammed Hydhar Ali



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ORDER

This Civil Revision Petition has been filed against the Order dated January 25, 2023 made in I.A.No.343 of 2022 in O.S.No.82 of 2022 on the file of District Munsif, Arakkonam, Vellore District [hereinafter 'Trial Court' for brevity]

2. The revision petitioners herein are the defendants 1 to 4 and the respondents 1 to 6 herein are the plaintiffs and the respondents 7 and 8 are the defendants 5 and 6 in the Original Suit.

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

4. The plaintiff filed the Original Suit in O.S.No. 82 of 2022 on the file of the Trial Court, for the relief of declaration declaring the right of



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way of the residents of the Annai Kasthuribai Street, Annaisivakami Street, Tiruvallur Street, Mangalakizhar Street, Kainoor Village and many streets to have access to their houses in the Suit 'B' and 'C' Schedule Properties which forms part and parcel of Suit 'A' Schedule Property and granting a mandatory injunction directing the 1st defendant to remove the unlawful construction put up by the 1st defendant over the Suit 'B' and 'C' Schedule Properties and restore the same in its original condition and other reliefs.

5. In the said Original Suit, the plaintiffs filed an Interlocutory Application in I.A.No.343 of 2022 under Order 26 Rule 9 of CPC, praying to appoint an Advocate Commissioner to inspect and note down the physical features of 'B' and 'C' Schedule Properties with the help of Town Surveyor and file a report and plan.



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6. The first defendant filed counter affidavit by raising objection for Appointment of Advocate Commissioner. The Trial Court after hearing both sides, allowed the said application by Order dated January 25, 2023 by appointing an Advocate Commissioner to inspect and note down the physical features of Suit 'B' and 'C' Schedule Properties with the help of Town Surveyor and to file a report and plan.

7. Feeling aggrieved by the Order of the Trial Court, the defendants have preferred this Civil Revision Petition.

8. Mr.Jeremiah Gregory John, learned Counsel appearing for the revision petitioners/defendants argued that no survey number has been mentioned in the Suit Description of Properties. He further submits that the application was filed only to collect evidence by way of Advocate Commissioner and the Trial Court erred in allowing the said application.



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Accordingly, he prays to allow the Civil Revision Petition.

9. In response to the above arguments, Mr.K.Venkateshwaran for Mr.M.Sathish Kumar, learned Counsel for the respondents/plaintiffs would submit that the defendants encroached a portion of the Suit Property and to prove the exact encroached portion of the Suit Property by appointment of Advocate Commissioner along with Taluk Surveyor, is very much essential. The Trial Court after hearing both sides, allowed the application. Hence, there is no infirmity in its Order. Accordingly, he prays to sustain the order passed by the 'Trial Court'.

10. This Court has considered both sides' submissions.

11. The case of the plaintiff is that the defendants encroached a portion of the Suit Property and put up a construction. To find out the



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exact encroachment, the plaintiff filed an Application seeking appointment of Advocate Commissioner along with Taluk Surveyor. The defendants objection is that the Suit Schedule of Properties do not contain survey numbers and exact extent of Suit Properties. In the absence of survey number and extent, Appointment of Advocate Commissioner would not serve any purpose. The plaintiff wants to collect evidence by way of Advocate Commissioner, which is impermissible in law. This Court has perused the Schedule of Properties mentioned in the petition. Though survey number has not been mentioned, street name and four boundaries have been given. Hence, there may not be any difficulty in identifying the petition mentioned properties. Hence, this Court is of the considered view that to find out as to whether the defendants have encroached a portion of the Suit Property or not, absolutely an Advocate Commissioner's report is essential. Hence, this Court does not find any merits in the Civil Revision Petition and the same is liable to be dismissed.



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12. Accordingly, this Civil Revision Petition is dismissed.

Considering the facts and circumstances, no costs. Consequently,
connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

Speaking Order : Yes/No

MSM

To

The District Munsif, Arakkonam,
Vellore District.



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R. SAKTHIVEL, J

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