



C.R.P. No.2452 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM:

**THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.No.2452 of 2023  
and CMP.No.15272 of 2023

Sankar @ Muthaiyan

... Petitioner

Vs

1.Selvam  
2.Vinayagamourthy  
3.Vengatesan

... Respondents

**Prayer :** Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 16.02.2023 passed in I.A.No.1109 of 2022 in O.S.No.272 of 2022 on the file of the Principal District Munsif at Puducherry.

For Petitioner : Ms.Elizabeth Ravi

For Respondents : Mr.B.Balavijayan



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## **ORDER**

The defendant is the civil revision petitioner. The suit in O.S.No.272 of 2022 has been filed for the purpose of permanent injunction restraining the defendant, their men, agents and subordinates from disturbing or dispossessing or constructing over the suit 'C' schedule mentioned property.

2. The case of the plaintiffs is that the suit 'A' schedule mentioned property belonged to one Natesa Mudaliyar and Annamalai Mudaliyar. They partitioned the properties among themselves on 19.06.1947. Natesa Mudaliyar, who is none other than the grandfather of the plaintiffs died on 24.12.1978 leaving behind his son Ramalingam, the father of the plaintiffs. Ramalingam too died on 18.10.2005 leaving behind the plaintiffs, his wife Thaiyalnayagai and his daughter Rajeswari as his legal heirs. Thereafter, on 11.02.2020, Thaiyalnayagi and Rajeswari executed a release deed relinquishing their interest, right and title over the 'A' schedule property in favour of the plaintiffs. The defendant is the descendant of Annamalai Mudaliyar, who is in possession of 'B' schedule mentioned property. Fearing that the 'C' schedule mentioned property which belongs to the plaintiffs



would be encroached upon by way of construction put up by the defendant, the plaintiffs have brought forth the aforesaid suit. Pending the suit, an application in I.A.No.166 of 2022 was taken out by the plaintiffs seeking for a temporary injunction, in which, notice had been ordered by the Trial Court.

3. Detailed written statement was filed by the sole defendant stating that the extent mentioned in 'A' to 'C' schedule properties in the plaint is erroneous. He had disputed the extent as 45 ft., and had claimed a right over that portion.

4. Since there is a dispute in extent, the plaintiffs took out an application in I.A.No.1109 of 2022 for appointment of Advocate Commissioner. A detailed counter was filed by the defendant stating that it is for the plaintiffs to prove the averments made in the plaint and the appointment of Advocate Commissioner is only for the purpose of collecting evidence in the suit, and therefore, the application is not maintainable.

5. The learned Judge upon perusing the affidavit and counter and after



hearing the arguments, had allowed the said application. Challenging the same, the defendant had filed the present revision.

6. Heard Ms.Elizabeth Ravi, learned counsel for the revision petitioner and Mr.B.Balavijayan, learned counsel for the respondents.

7. At the outset, I have to agree with Ms.Elizabeth Ravi that the order of learned Trial Judge is laconic and unreasoned. In fact, no reasons have been set out by the learned Judge as to why he had allowed the application filed for appointment of Advocate Commissioner. If I were to set aside the order and remit it back to the Trial Court for fresh disposal, then it will not give a quietus to the litigation, but would result in a quagmire of never ending revisions, that may be preferred either by the plaintiffs or the defendant, in case the order goes against them after remand. As a result, the parties might always be litigating in the peripheries and would never get into the meat of the matter. The Damocles Sword will hang over both their heads. Therefore, in the very interest of the parties and to give a quietus to the present issue, though I agree with Ms.Elizabeth Ravi on her point, I heard the revision on the merits of the case.



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8. The entire dispute relates to the measurement of the property. The plaintiffs claim that despite the fact that specific measurements are given in the partition deed of the year 1947, the defendant is greedy and extended his possession to areas which he is not entitled to. The defendant pleads that he is only renovating the existing property which came to him from his father Arumugam Mudaliar, and he is making constructions well within the area to which he is entitled to, by virtue of grant made in favour of Annamalai Mudaliyar in the partition deed and what Arumugam Mudaliyar had acquired subsequently.

9. Primarily, the dispute relates to the extent of 'A', 'B' and 'C' schedules. The issue is whether the person who is entitled to 'B' schedule is encroaching upon the 'C' schedule, or whether 'C' schedule is a part of 'A' schedule. This is the matter in issue and the only way it can be resolved by the Court is when the Court Commissioner visits the property and surveys the land in dispute. The fear of Ms.Elizabeth Ravi that the finding of the Advocate Commissioner on possession is unnecessary, because the Advocate Commissioner cannot speak about the possession of the property. According



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to me, the Commissioner who will visit the property will measure the respective portions given in the schedule on the basis of the documents produced by the plaintiffs and defendant, and submit a report. It is not a fishing exercise or expedition to procure evidence, but the report of the Advocate Commissioner would enable the Court to understand the matter in issue. This comes within the scope of Order XXVI Rule 9 of CPC.

10. Though there are no reasons given by the learned Principal District Munsif, Puducherry in his order dated 16.02.2023 in allowing the application in I.A.No.1109 of 2022 in O.S.No.272 of 2022, however, following the verdict of the Supreme Court in ***Haryana Waqf Board Vs Shanti Sarup and others, (2008) 8 SCC 671***, where it has been held that in case of dispute over identity of a property, appointment of Advocate Commissioner is desirable. Therefore, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No  
Speaking order / Non-speaking order  
ds

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To:

- 1.The Principal District Munsif  
Puducherry.
- 2.The Section Officer,  
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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