



WEB COPY

C.R.P. (PD) No.3486 of 202



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P. (PD) No.3486 of 2024
and C.M.P.No.18862 of 2024**

1.Kandasamy
2.Arul Selvan
3.Ashokkumar
4.Anitha

... Petitioners

Vs.

1.K.Ramachandran
2.Sivagami

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Code of Civil Procedure, to set aside the fair and decreetal order in I.A.No.3 of 2023 in A.S.No.4 of 2023 dated 21.06.2024 on the file of the Subordinate Judge, Rasipuram.

For the Petitioners : Mr.D.Vasanth

ORDER

This Civil Revision Petition arises against the order of the learned Subordinate Judge, Rasipuram in I.A.No.3 of 2023 in A.S.No.4 of 2023 dated 21.06.2024.

2. A.S.No.4 of 2023 arises out of the Judgment and Decree of the learned District Munsif, Rasipuram in O.S.No.84 of 2014. O.S.No.84 of 2014 is a suit for recovery of possession.



WEB COPY

3. On being served with the summons in the suit, the defendants took a plea of adverse possession. Pending the suit, an application was taken for appointment of an Advocate Commissioner in I.A.No.393 of 2014. The Advocate Commissioner had also visited the suit property and submitted his report on 16.10.2014. The Civil Revision Petitioner has also filed an objection to the same. After hot contest, the learned Trial Judge, came to decree the suit on 09.12.2022, against which an appeal in A.S.No.4 of 2023 has been preferred.

4. When the appeal suit was posted for arguments, the appellants/defendants took out an application for appointment of an Advocate Commissioner to localize the property, note down the buildings together with iron fence found therein with the help of the P.W.D Engineer, and determine the age of the building and submit a report. The learned Judge would have none of it and dismissed the petition. Hence, the revision.

5. Heard, Mr.D.Vasanth for the Civil Revision Petitioners.

6. Mr.Vasanth would submit that the relief that he seeks for in the present petition is fundamentally different from the relief that was granted in



the Trial Court in I.A.No.393 of 2014. He would submit that the Advocate Commissioner's report, submitted pursuant to the order in I.A.No.393 of 2014, is erroneous and the learned Trial Judge did not consider the objections that has been made by the Civil Revision Petitioners and erroneously decreed the suit. Hence, he would state that the order cries out interference by this Court.

7. I have carefully considered the arguments of Mr.D.Vasanth.

8. This is a suit for recovery of possession. In the said suit, the Civil Revision Petitioners did not take a positive plea of title. Their plea is one of adverse possession. The very plea of adverse possession shows that the defendants concede to the title of the plaintiffs and claims that they are in possession of the property for over the statutory period. Whether the property in possession of the defendants is over the statutory period or not cannot be determined by an Advocate Commissioner. It requires evidence, oral and documentary. I am sure, if the Civil Revision Petitioners are in possession of such documents, they will press the same in to service at the time of disposal of the appeal.



9. The point remains that the Advocate Commissioner already visited the property, not once, but twice and thereafter he had submitted his report under Exs.C.1 to C4. If the lower Appellate Court appoints a fresh Advocate Commissioner, the condition precedent is that previous report requires to be set aside. The records do not reveal that any such petition has been taken out by the defendants to set aside the previous report. The Code of Civil Procedure does not contemplate about multiple reports from multiple Commissioners in one suit. When the defendants have claimed that they are in possession of the property over 50 years, and have perfected title by adverse possession, they would have to prove by tendering appropriate evidence for the said purpose.

10. An Advocate Commissioner, even if accompanied by a PWD Engineer, cannot be utilised for the purpose of proving that the plaintiffs' building is over 50 years. It is theoretically possible that the plaintiffs would have used the materials over the past 50 years to construct something recently. Apart from that an application under Order XXVI Rule 9 of CPC which has been taken out in the appellate Court has not been accompanied by a petition under Order XLI Rule 27.



C.R.P. (PD) No.3486 of 202

11. The reasons granted by the learned Judge in paragraph Nos.10 and 11 of the impugned order states the correct position of law. It does not require any interference. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

02.09.2024

Jer

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Neutral citation : Yes / No

To

The Subordinate Judge, Rasipuram.



WEB COPY



C.R.P. (PD) No.3486 of 202

V.LAKSHMINARAYANAN, J.,
Jer

**C.R.P. (PD) No.3486 of 2024
and C.M.P.No.18862 of 2024**

02.09.2024