



**CRP(MD).No.57 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 13.02.2024**

**CORAM :**

**THE HON'BLE MR JUSTICE G.ILANGOVAN**

**CRP(MD).No. 57 of 2024 and**  
**CMP(MD).No. 303 of 2024**

**B.Kannan**

**Vs.**

**Petitioner**

1.Sridharan  
2.N.Baskar  
3.A.Geetha  
4.N.Vijaya  
5.K.Alagar  
6.K.Vani

7.The District Collector,  
Madurai District collectorate,  
Madurai.

8.The District Revenue Officer,  
Madurai District Collectorate,  
Madurai -20.

9.The Revenue Divisional Officer,  
Taluk Office Campus,  
Tirumangalam,  
Madurai District.

10.The Tahsildar,  
Taluk Office Campus,  
Kallikudi,  
Madurai District.



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(the Ex-parte order, dated 09.11.2023 passed against the respondents 7 to 10 by the trial Court, so notice to the said respondents may be dispensed with)

Respondents

**PRAYER :** Petition filed under Article 227 of the Constitution of India to call for the records of the order in I.A.No.521 of 2021 in O.S.No.290 of 2021 on the file of the Subordinate Judge, Thirumangalam, dated 09.11.2023 and to set aside the same.

For Petitioner : Mr. N. Mohideen

For Respondent : Mr.A.Sivana Pandian

### **ORDER**

This Civil Revision Petition is filed to set aside the fair and decreetal order, dated 09.11.2023 passed in I.A.No.521 of 2021 in O.S.No.290 of 2021 on the file of the Subordinate Judge, Thirumangalam.

2. The suit in O.S.No.250 of 2021 was filed by the respondents 1 to 4 / plaintiffs against this petitioner and others seeking the relief of declaration that they are entitled to the suit property and consequential recovery of possession by removing the existing



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superstructure and declaration that the settlement deed, dated 06.08.2019 is null and void and for mandatory injunction etc.,

3. The revision petitioner herein, who is the first defendant in the suit filed written statement also. Pending further process I.A.No. 521 of 2021 was filed by the the plaintiffs seeking an order of appointment of Advocate Commissioner to note down the physical features and to measure the property it was allowed by the trial Court. Against which this petitioner preferred this revision.

4. Heard both sides. Since the order going to be passed will not cause any prejudice to the rights of the respondents / plaintiffs, no notice need be sent to the respondents.

5. The brief facts stated in the petition that the suit property originally comprised in old Natham S.No.155/5 new Natham S.No. 393/3 measuring about 40 cents. The said property was originally occupied and enjoyed by one Narasimman and his junior paternal uncle Kasthuri Rengan. They are enjoying the property by demolishing the old house and still debris of basement are available in that property. They are



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using the same for tying cattles, storing hayrick and manures etc.,

Natham Patta was also granted in their name, but, there is a mistake in the name of Kasthuri Rengan. The said Narasimman gifted one Cent for construction of water tank in the year 1999 in favour of the Government. One Narayana Thevar, who is the grand father of 2<sup>nd</sup> and 3<sup>rd</sup> defendants fraudulently include his name in the patta of the suit property and he executed a registered gift settlement dated, dated 06.08.2023 in favour of the defendants 2 and 3 for 13 cents. Proceedings were taken to cancel the name of Krishnan in the patta and his name was also deleted, after coming to know that Narayana Thevar has no right over the suit properties.

6. Now, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants colluded with the 1<sup>st</sup> defendant encroached the suit property on 14.08.2021 and removed the existing debris of old basement construction and put up a tin roofed shed and planted stone pillars. Therefore, the suit was filed seeking the above said reliefs. So, the Commissioner is required to note down the physical features and measure the same. That was resisted by the revision petitioner stating that the plaintiff had no right over the properties. The first defendant's mother paid Rs.5,000/- to one Kasthuri for



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relinquishment of her right in the property. After that the mother was in enjoyment and put up shed. The defendants 2 and 3 have filed the suit in O.S.No.158 of 2015 filed before the District Munsif, Thirumangalam for permanent injunction. Narayana Thevar, who is the grand father of the 2<sup>nd</sup> and 3<sup>rd</sup> defendant occupied 13 cents in S.No.399/3 and the daughter of Narayana Thevar viz., Dhanalakshmi raised a a construction in One Cent on the North East of the property. So they want the petition to be dismissed.

7. The trial Court after considering the rival submissions came to the conclusion that the suit is filed for recovery of possession and mandatory injunction and therefore, unless Advocate Commissioner is not appointed to note down the physical features and measurements of the plaint schedule property, the dispute cannot be resolved. Against which the present revision is preferred on the ground that the appointment of Commissioner sought by the respondents only for the purpose of collecting the evidence. So, apart from that the factual matter mentioned in the respective statements are also mentioned.

8. As mentioned above, both claimed rival title. Now, the



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only point is with regard to the availability of the physical features and the alleged encroachment made by the defendants. It appears that in the Survey Number mentioned in the plaint, both the parties are claiming rival title. So unless the Commissioner is appointed to take out the measurement it cannot be brought on record the respective extent.

9. So the appointment of Commissioner to measure the property will only help the Court to know the actual physical features available and as per the actual aspect in the dispute between the parties. Apart from that since the mandatory injunction is also sought in the plaint unless the superstructure available are brought on record no effective conclusion can be reached by the trial Court. So, the measurement of the property noting down the physical measure will not amount to collection of evidence. The plaintiffs do not want to establish their case by way of commissioner's findings. It got to be independently decided. So only for the limited purpose the Advocate Commissioner was appointed. So, I do not find any illegality in the order passed by the Court below and hence, the Civil Revision Petition is liable to be dismissed.



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10. Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

**13.02.2024**

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

trp

To

The Subordinate Judge, Thirumangalam,



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**G.ILANGOVA, J.**

Trp

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