



C.R.P.(MD)No.157 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.157 of 2024

and

CMP(MD)No.662 of 2024

Sivakumar : Petitioner/Petitioner/
Plaintiff

Vs.

1.Pandiyan.P
2.P.Nedunchezhiyan : Respondent/Respondent/
Defendant

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the impugned order, dated 27/07/2021 passed in IA No.1 of 2019 in OS No.222 of 2018 by the Additional District Munsif Court, Ilalkudi and pass such further or other orders.

For Petitioner : Mr.R.Srinivasan

For 1st Respondent : Mr.N.Ananda Kumar

For 2nd Respondent : No appearance

O R D E R

This civil revision petition has been filed seeking to the impugned order, dated 27/07/2021 passed in IA No.1 of 2019 in OS No.222 of 2018 by the Additional District Munsif Court, Ilalkudi.



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2. The facts in brief:-

The suit in OS No.222 of 2007 was filed by the plaintiff namely the petitioner herein seeking the relief of permanent injunction and for costs. The defendants entered appearance, filed their written statement. Pending further process, a petition was taken out by the plaintiff against the defendants/respondents seeking appointment of Commissioner.

3.After hearing both sides, the trial court dismissed the petition.

4.Against which, this civil revision petition is preferred.

5.In the petition, the petitioner has stated that the suit property is a northern 3 cents, out of the total 59 cents, within the share of one Subbaiyan Muthiriyar measuring about 6 cents. Present survey number is 123/2F. It originally belongs to the grandfather namely Subbaiyan Muthiriyar. He executed a Will, on 08/09/1986 in favour of his grand-childrens mentioned in the petition. As per the Will, the property devolved upon the plaintiff's father namely Kulandavivelu. Kulandaivelu executed a Will, on 23/04/2001. The Will came into effect. He came into possession of the property.



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6.The respondents/defendants are having properties on the southern side of the suit property. There was a common pathway from his north-south road to reach the present suit property. To locate the three cents, Commission petition is filed.

7.That was resisted by the respondents stating that since the suit is for permanent injunction, there is no necessity for appointment of Commissioner. Proper particulars are also mentioned in the plaint.

8.The trial court was of the view that since the suit for permanent injunction, whether the property belongs to the petitioner and his possession must be decided on the basis of the evidence adduced and documents produced. So, the appointment of Commissioner is not required.

9.The learned counsel appearing for the petitioner would submit that lie of the property and the four boundaries are now disputed. Unless the Commissioner is appointed, the lie of the property and the four boundaries cannot be correlated with reference to the documents.



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10.Perusal of the records shows that the suit property lies in survey No.123/2F. Before sub-division, originally the property situated in Survey No.321/2. The total extent in the previous survey number is 59 cents. In the 59 cents, Subbaiyan Muthiriyar, had 6 cents. Out of the 6 cents, northern 3 cents belongs to the plaintiff. So, the description of the plait schedule property is also confusing. Finding the correct four boundaries and lie of the property, it is the only point to be decided by the trial court. That cannot be decided on the basis of the documents, since as mentioned above, there is confusion. Appointment of Commissioner will bring out the correct particulars. So, unnecessary oral evidence can be avoided. It will also help the court to arrive at a just conclusion. On the sole ground, this civil revision petition is allowed.

11.In the result, this civil revision petition is **allowed**. The order, dated 27/07/2021 passed in IA No.1 of 2019 in OS No.222 of 2018 by the Additional District Munsif, Ilalkudi is set aside. There shall be a direction to the trial court to appoint a Commissioner to visit the suit property, take out the measurement of the property with the assistance of the Surveyor with reference to the documents. The trial court may fix the fee for the



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Commissioner. The trial court may also direct the Commissioner to file a report within a period of three months and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

19/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The District Munsif,
Ilangudi,
Trichy District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGO VAN, J

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