



C.R.P.(MD)No.209 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.209 of 2024
and C.M.P.(MD).No.886 of 2024

1.Periya Muniyasamy

2.Thangapandi

3.Veldurai

... Petitioners/Petitioners/Plaintiffs

Vs.

1.Kaliammal

2.Kanagamani

... Respondents/Respondents/

Defendants 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.2 of 2022 in O.S.No.352 of 2022, dated 23.08.2023 on the file of the Sub Court, Sankarankovil.

For Petitioners : Mr.S.Kumar

For Respondents : No Appearance



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ORDER

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This civil revision petition has been filed against the fair and decreetal order passed in I.A.No.2 of 2022 in O.S.No.352 of 2022, dated 23.08.2023, on the file of the Sub Court, Sankarankovil.

2.Suit in O.S.No.352 of 2022 has been filed by the revision petitioner herein seeking the relief of declaration that the suit property absolutely, belongs to the plaintiff and the third defendant and for consequential injunction. The defendants entered appearance and filed their written statement. Pending further process the petition was taken out by the petitioners under Order 26 Rule 9 of CPC to appoint Commissioner. That came to be dismissed by the trial Court. Against which, this revision petition has been preferred.

3.In the petition, the revision petitioner stated that the property originally belongs to Kottur Samy thever by way of purchase. Patta No. 211 was issued in his favour. He died intestate on 01.11.2004 leaving behind the parties as mentioned in the plaint. The respondents 1 and 2 have no right over the properties. But during subdivision the patta was wrongly issued in the name of the second respondent's mother namely



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Muthu Pechi in S.No.276/23. Based upon the wrong subdivision now they are making rival claim over the property. So a commissioner must be appointed.

4.That was resisted by the respondent stating that the respondents are also joint owners. So injunction cannot be granted against the co-owners.

5.The trial Court was of the view that the title over the property must be decided on the basis of the evidence and commissioner cannot be appointed for collection of those particulars. Against which, this revision is preferred.

6.The learned counsel for the revision petitioner would submit that the respondents 1 and 2 has no title over the property. But, during the subdivision, the Revenue authorities granted patta in favour of the Muthupechi in S.No.276/23. So the properties must be measured with reference to the title documents of the revision petitioner's father. Simply because of joint patta is granted, which is also now under question, it will not create any right in favour of the respondents. Unless the



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measurement is taken with reference to the title document, the issue between the parties could not be resolved.

7.I find substantial force in the arguments advanced by the learned counsel for the revision petitioner. No doubt that they have not mentioned specific reason as to why the property must be measured with reference to the title document and the revenue records. That mistake on the part of the revision petitioner before the trial Court, need not be considered as fatal.

8.In view of the above said factual circumstances, I am of the considered view that appointment of Commissioner and taking measurement with reference to the title document and the revenue records will help the Court to resolve the issue. So that unnecessary oral evidence can be avoided.

9.On that ground this petition stands **allowed** and the trial Court is directed to appoint a commissioner fixing proper remuneration. The commissioner shall measure the property with the help of a qualified surveyor, with reference to the title documents as well as the revenue



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records and file his report along with sketch. No costs. Consequently,
connected miscellaneous petition is closed.

21.03.2024

Index : Yes / No
Internet : Yes / No
TM

To

- 1.The District Judge, Theni.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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