



CRP(MD).No.1401 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2024

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

C.R.P(MD)No.1401 of 2024 and  
CMP(MD).No.8339 of 2024

Parathesi : Petitioner / respondent

Vs.

1.The District Collector,  
Korampallam,  
Thoothukudi.

2.The Tahsildar,  
Taluk Office,  
Kayathar,  
Thoothukudi District.

3.The Block Development Officer,  
Panchayat Union Office,  
Kayathar,  
Thoothukudi District.

4.The Special Officer,  
South Ilanthaikulam Panchayat,  
Kayathar,  
Thoothukudi District.

5.Shanmugam

6.Kalaipandi

7.Muthusamy

8.Ramachandran

: Respondents / defendants



CRP(MD).No.1401 of 2024

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, as against the fair order, dated 22.02.2024 passed in I.A.No.193 of 2022 in O.S.No.104 of 2019 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District.

For Petitioner : Mr.S.Velrajan  
For respondents 1 to 4 : Mr.B. Saravanan  
Additional Government Pleader  
For respondents 5 to 8 : Mr.S.Palanivelayutham

### **ORDER**

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 22.02.2024 made in I.A.No.193 of 2022 in O.S.No. 104 of 2019 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District.

2. The revision petitioner as plaintiff filed the above suit in O.S.No. 104 of 2019 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District for declaration and mandatory injunction and for recovery of possession. Pending suit, the revision petitioner has come out with an application in I.A.No.193 of 2022 for appointment of an Advocate Commissioner to inspect the suit property and to note down the physical



CRP(MD).No.1401 of 2024

features and measure the same and find out whether there is any encroachment in the suit property. The said application was resisted on the side of the respondents / defendants. The trial Court has dismissed the said application stating that the Commissioner cannot be appointed to speak about the possession of the parties. Aggrieved by the same, the present revision is preferred.

3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the petitioner has purchased the suit property in S.No. 267 / 2D situated at Ilanthaikulam village on 29.03.1978 vide document No.478/1978 by means of two sale deeds, dated 29.03.1978 and 03.10.1984. Thereafter, in the year 1990, the revision petitioner has sold 42 cents in the scheduled property and remaining 42 cents in S.No.267 /2 in possession and enjoyment of the revision petitioner, for which patta No. 548 has been issued in favour of the revision petitioner. While issuing patta, the revenue authorities wrongly mentioned the extent of land as 37 Cents instead of 42 Cents. In such circumstances, the 5<sup>th</sup> respondent herein has purchased 12 cents in S.No.267/2 on 19.07.1978 and thereafter, it was sub divided in S.No.267/2D and patta No.300 was issued by the revenue authorities in favour of the 5<sup>th</sup> respondent. However, the patta was issued



CRP(MD).No.1401 of 2024

in favour of the 5<sup>th</sup> respondent for an extent of 16 cents instead of 12 cents.

The 5<sup>th</sup> respondent and his legal heirs viz., respondents 6 to 8 are in possession of only 12 Cents. In these circumstances, from the year 2018 the respondents 5 to 8 have encroached upon the property of the revision petitioner to an extent of 4 Cents without any title. Furthermore, the 4<sup>th</sup> respondent is laying Thar Road in the pathway belonging to the revision petitioner without any permission from him. No settlement deed was executed in favour of the 4<sup>th</sup> respondent in respect of the said pathway. Hence, the petitioner was constrained to file the above suit in O.S.No.104 of 2019 and also filed an application in I.A.No.193 of 2022 for appointment of Advocate Commissioner to inspect and survey the plaint schedule property based on the sale deeds. However, the trial Court dismissed the said application without considering the above facts. He would further submit that the revision petitioner has valid title to the suit property and therefore, to establish the factum of encroachment it is necessary to appoint an Advocate Commissioner and prays for allowing this Civil Revision Petition.

4. On the other hand, the learned counsel appearing for the respondents would submit that the Commissioner cannot be appointed for



CRP(MD).No.1401 of 2024

establishing the possession of the property and therefore, the trial Court has rightly dismissed the said application which calls for no interference by this Court.

5. Heard on both sides and perused the materials available on record.

6. It is the specific case of the revision petitioner that he is entitled to 42 Cents in the suit Survey Number whereas the patta has been issued only for 37 Cents and the 5<sup>th</sup> respondent is entitled to 12 Cents, but, the patta was wrongly issued for 16 Cents. While so, the same has to be established by oral and documentary evidence. The Commissioner cannot be appointed for collecting the evidence to establish the fact actually the parties are entitled. Moreover, the Advocate Commissioner cannot be appointed for ascertaining the possession of the parties. Hence, the trial Court has rightly dismissed the application which calls for no interference by this Court.

7. Accordingly, this Civil Revision Petition is dismissed on deviod of merits confirming the order, dated 22.02.2024 made in I.A.No.193 of 2022 in O.S.No.104 of 2019 on the file of the District Munsif Court,



CRP(MD).No.1401 of 2024

Kovilpatti, Thoothukudi District. No costs. Consequently, the connected

Miscellaneous Petition is closed.

04.12.2024

Index : Yes / No

Internet : Yes/ No

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*CRP(MD).No.1401 of 2024*

**K. GOVINDARAJAN THILAKAVADI, J.,**

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