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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 28.08.2024****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****C.R.P.(MD)Nos.2469 of 2023 & 1700 & 1701 of 2024 and**
C.M.P.(MD)Nos.12898 of 2023 & 9918 of 2024C.R.P.(MD)No.2469 of 2023

1. Subaitha Beevi @ Subaitha

2. Mohamed Jisthy

(Petitioners 1 and 2 are rep. Through
their power agent Thoufic.)... Petitioners/Petitioners/
Defendants 1 & 2

Vs.

1. P.Mohammed Riyas

... 1st Respondent/1st Respondent/
Plaintiff

2. S.Amirtham

3. S.Eugene

4. I.Aysha Beevi

5. A.Rohia Beevi

6. Mydeen Beevi

... Respondents 2 to 6 / Respondents 2 to 6/
Defendants 3 to 7

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Subordinate Judge at Padmanabhapuram in I.A.No.7 of 2023 in O.S.No.283 of 2011 dated 17.04.2023 by allowing this revision petition.



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C.R.P.(MD)No.2469 of 2023

For Petitioners : Mr.S.Selvakumar
For R-1 : Mr.T.Antony Arul Raj
For R-2 & R-3 : No appearance.

C.R.P.(MD)Nos.1700 & 1701 of 2024

P.Mohammed Riyas ... Petitioner / Petitioner /
Plaintiff

Vs.

1. Subaitha Beevi @ Subaitha
2. Mohamed Jisthy
3. S.Amirtham
4. S.Eugine
5. I.Aysha Beevi
6. A.Rohia Beevi
7. Mydeen Beevi ... Respondents 1 to 7 / Respondents 1to7/
Defendants 1 to 7

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal orders passed by the Subordinate Judge at Padmanabhapuram in I.A.Nos. 11 and 12 of 2024 in O.S.No.283 of 2011 dated 21.06.2024 by allowing these revision petitions.

For Petitioner : Mr.T.Antony Arul Raj
For R-1 & R-2 : Mr.S.Selvakumar
For R-3 to R-5 : No appearance.



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COMMON ORDER

After hearing the learned counsel on either side, the following consent order is passed.

2. O.S.No.283 of 2011 was filed by P.Mohammed Riyas for demarcation, mandatory injunction and permanent injunction. It is not in dispute that P.Mohammed Riyas claims 21.497 cents in survey No.595/13. Subaitha Beevi @ Subaitha and Mohamed Jisthy claim 6½ cents in the said survey number. Already an Advocate Commissioner was appointed but it is stated that his report is not satisfactory.

3. The suit is now posted at the arguments stage. Since on account of boycott of the bar, both the sides did not come forward to argue the matter, the case has been posted for judgment.

4. The plaintiff has filed I.A.No.11 of 2024 for reopening the suit and I.A.No.12 of 2024 for reissuing warrant to the Advocate



Commissioner. Subaitha Beevi @ Subaitha and Mohamed Jisthy filed I.A.No.7 of 2023 for appointing a new Advocate Commissioner.

5. The Court below had dismissed all the three IAs. primarily on the ground that they have been belatedly filed. The case on hand involves demarcation. Therefore, the report of the Advocate Commissioner would definitely facilitate the Court below to effectively adjudicate the issue.

6. In this view of the matter, the orders impugned are set aside. These civil revision petitions are disposed of in the following terms:-

a) The report of the earlier Advocate Commissioner stands scrapped.

b) The Court below is directed to appoint a new Advocate Commissioner to conduct survey of the property of the plaintiff as well as that of the other defendants by taking into account their respective title documents and in the light of the current revenue records. The Advocate Commissioner shall complete this exercise in terms of the warrant to be issued by the Court below and submit a report along with sketch and plan before the Court below.



c) The Court below is directed to reopen the suit.

O.S.No.283 of 2011 stands reopened. The suit will be taken up for arguments after the submission of report by the Advocate Commissioner.

No costs. Consequently, connected miscellaneous petitions are closed.

28.08.2024

Index : yes/No
Internet: Yes/No
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C.R.P.(MD)No.2469 of 2023

G.R.SWAMINATHAN,J.

PMU

To

1. The Subordinate Judge,
Padmanabhapuram.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court, Madurai.

**C.R.P.(MD)Nos.2469 of 2023 &
1700 & 1701 of 2024**

28.08.2024