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CRP No.744 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-02-2025

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

CRP No.744 of 2025

and

CMP.No.4259 of 2025

K.Jeeva

... Petitioner

Vs

1.G.Meena

2. G.Balaji

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 19.10.2024 made in IA.No.3 of 2023 in OS.No.51 of 2023 on the file of Principal District Munsif Court, Alandur.

For Petitioner: Mr..C.Prabakaran

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 19.10.2024 made in IA.No.3 of 2023 in OS.No.51 of 2023 on the file of Principal District Munsif Court, Alandur.



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2. Aggrieved by the dismissal of her application, I.A.No.3 of 2023

seeking appointment of an Advocate Commissioner to note down the physical features of the properties of subject matter of the suit in O.S.No.51 of 2023 on the file of Principal District Munsif Court, Alandur, the plaintiff as petitioner is before this Court.

3. The petitioner herein had filed the above referred suit seeking a bare injunction restraining the respondents herein, their men, agents, servants etc., from in any manner interfering with her peaceful possession and enjoyment of the suit schedule property. The petitioner would claim her right to the suit property through her husband G. Kanniappan, Son of Gopal. It is her case that the property was her husband's ancestral property. Patta and other revenue records stood in the name of her husband. Thereafter, on 26.11.2021, he had settled the property in favour of the petitioner and from the said date, she has been in possession and enjoyment of the same. She has got the patta mutated in her name and that apart, she had obtained a planning permission from the Commissioner, St. Thomas Mount Panchayat Union for putting up a construction on the said land on 30.05.2022. The Kovilambakkam Panchayat had also given their sanction by proceedings dated 27.06.2022.



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4. It is also the case of the petitioner that she had since put up construction and electricity service connection has also been extended to her residence. While so, on 29.01.2023, the 2nd respondent along with a few anti social elements had come to the property and threatened the petitioner to vacate the same claiming that it belongs to the 1st respondent herein. The petitioner and her husband had filed a complaint regarding the above incident with the local police station and therefore she had come forward with the suit in question. The property has been described within four boundaries with the over all measurements.

5. The 1st respondent had filed her written statement denying the said contention set out in the plaint. It is her contention that the property which was originally comprised in S.No.38, measuring total extent of 49 cents belonged to Duraiswamy Naicker, who had acquired the same under a registered sale deed dated 27.01.1940. The 1st respondent would further submit that after his demise, his legal heirs had sold the property to Sadagopan, Arumugam and Natesan to an extent of 21 cents, 5 cents and 21 cents respectively. Thereafter, Natesan has, in turn sold his 21 cents to Ravichandran, Padmavathi, Jaya Lakshmi, Gopala Krishnan and Mala to an



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extent of 5 cents, 6 cents, 5 cents and 5 cents respectively. One Deenadayalan had inherited 2 cents from Kuppusamy Naicker. Therefore, the property in question measuring 49 cents belonged to Sadagopan, Arumugam, Ravichandran, Padmavathi, Jayalakshmi, Gopalakrishnan, Mala and Deenadayalan. Thus, the first respondent's contention is that the entire extent of 49 cents in S.No.38 was purchased by her husband Gnanasundaram under a registered sale deed dated 21.12.2006. He has also purchased another land measuring an extent of 18 cents in S.No.38 from Srirangam and others under a registered sale deed dated 11.04.1983. Thereafter, he had settled the property in dispute in favour of the 1st respondent under a registered Settlement Deed dated 28.05.2007 and from that date, she has been in possession and enjoyment of the same. It is her contention that the petitioner has created fraudulent document to claim ownership to the property and that she is the true owner having a title to the property.

6. Pending suit, the petitioner herein had come forward with the application, now impugned in this Revision Petition, to appoint an Advocate Commissioner to note down the physical features of the subject matter of the suit property. The reason given for seeking to appointment of Advocate



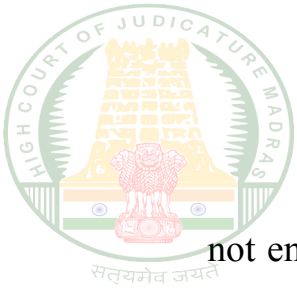
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Commissioner has been set out in paragraph No.5 of the affidavit filed in support of the said petition. The respondents 1 and 2 were called absent and were set exparte on 30.01.2024 for not filing their counter.

7. The learned Principal District Munsif, Alandur, after hearing the petitioner, dismissed the petition on the ground that it is nothing but an attempt to gather evidence. Aggrieved by the same, the petitioner is before this Court.

8. Heard Mr.C.Prabakaran, learned counsel appearing for the petitioner.

9. The petitioner has come forward with the suit in question seeking a bare injunction although the first defendant had filed a detailed written statement disputing title to the property. Though the petitioner is seeking appointment of 'Advocate Commissioner for the purpose of noting down the physical features, however from her evidence, it is clear that the petitioner wants the Advocate Commissioner to note down possession, existence of the superstructure and that it is serviced with electricity. In a suit for bare injunction, the application for appointment of an Advocate Commissioner is



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not entertained, since the evidence required in a suit for permanent injunction is proof of possession. In the guise of noting down the physical features, in the instant case, the existence or otherwise of the superstructure and the service connection is clearly an attempt to gather evidence regarding possession. Such an attempt cannot be encouraged. The learned Principal District Munsif, Alandur has rightly rejected the said application and I see no reason to interfere with this order. Consequently, the Civil Revision Petition stands dismissed. No costs. The connected CMP.No.4259 of 2025 is also closed.

26-02-2025

msr

Index: yes/no

Internet:yes/no

To

The Principal District Munsif Court, Alandur.



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P.T. ASHA, J.

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**CRP No.744 of 2025
and CMP.No.4259 of 2025**

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