



CRP.No559 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.559 of 2024

and

CMP.No.2782 of 2024

1.R.Shanmugam
2.G.Sengottaiyan

... Petitioners/Plaintiffs

Versus

Megavannan

... Respondent/defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order dated 22.11.2023 passed in IA.No.3 of 2023 in O.S.No.103 of 2023 on the file of the District Munsif Court, Perundurai and allow the Civil Revision Petition.

For Petitioners : Mr.S.Kaithamalai Kumaran

For Respondent : No appearance



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ORDER

Unsuccessful plaintiffs have preferred the present Civil Revision Petition.

2. The Revision petitioners/plaintiffs filed a suit in OS.No.103 of 2023 on the file of the District Munsif Court, Perundurai, seeking the relief of declaration that the suit 'B' Schedule cart-track as a common cart-track over which the plaintiffs are having an unfettered right of access to reach the suit 'A' Schedule property and permanent injunction. The defendant has not filed written statement. At this stage, the plaintiffs have filed an application in IA.No.3 of 2023 in OS.No.103 of 2023 under Order 26 Rule and Section 15 of CPC for appointing an Advocate Commissioner with directions to note down the physical features in and around the petition mentioned property, take necessary measurement and file his report with plan. Upon hearing on either side, the Court below vide order dated 22.11.2023 dismissed the application on the ground that there is no dispute as to the existence or description of 'B' Schedule of property and the only dispute between the parties is that whether the 'B' Schedule property is a common cart track or not and the Advocate Commissioner cannot be appointed to collect evidence to



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prove the possession and enjoyment by the petitioners/plaintiffs. Aggrieved over the same, the plaintiffs have preferred the present Civil Revision Petition.

3. According to the revision petitioners/plaintiffs, the Old S.F.No of the suit 'A' Schedule property is S.F.No.176B, 177A corresponding to R.S.No.152/4 and was purchased by one Perumal Gounder and Sengodagounder, who are sons of Angappagounder, on 26.03.1946, with specific boundaries under the registered document No.318/1946 S.R.O.Kavunthapadi. The said Perumal Gounder and Sengoda Gounder orally divided the properties which was jointly purchased by them in the year 1980 itself and as per the oral partition they are enjoying the same with specific boundaries. On 11.10.1984 under the registered document No.992/1984 S.R.O.Kavunthapadi the Sengoda Gounder and his sons Ramasamy and Gurusamy had entered into a registered partition deed in which, part of the suit 'A' Schedule property was allotted to Sengoda Gounder as his life estate. On 24.02.1993 the said Ramasamy son of Sengoda Gounder sold his share in the A Schedule property to the son of Perumal Gounder



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namely Rangasamy. On 16.07.2014 under the registered Document No.2003/2004 S.R.O.Kavunthapadi, the said Gurusamy and his two sons namely Sengottaiyan and Karuppusamy had divided their properties, in which, a part of the A Schedule property was allotted to the second plaintiff as B Schedule property and on 22.09.2016 under the registered document No.2720/2016 the said Rangasamy gounder son of Perumal gounder had executed a settlement deed in respect of suit A schedule property in favour of the plaintiffs. Therefore, the plaintiffs are absolute owner of 'A' Schedule suit property. After purchasing the properties under the aforesaid documents, the grand-father of the plaintiffs, after him the father of the plaintiffs thereafter, the plaintiffs using in 'B' Schedule property to reach the suit 'A' Schedule property. Except 'B' Schedule property there is no way to reach 'A' Schedule suit property. The suit 'B' Schedule property is the cart track with only access to 'A' Schedule property and except the same, the plaintiffs cannot reach the property at all. The defendant is trying to restrict the plaintiffs to use 'B' Schedule property by way of pathway. According to the defendant, the defendant never demanded the plaintiffs to sell their 'A' Schedule property for meagre amount and the defendant is the absolute owner of 'B' Schedule



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property and no one claim any pathway right or any other right etc.

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4. The learned counsel appearing for the revision petitioners would submit that the Court below failed to appreciate the scope of the petition and dismissed the same on the ground that there was no dispute regarding existence of 'B' Schedule property, which had caused irreparable loss to the revision petitioners herein. The Court below failed to note that the report of the Commissioner supported with the plan noting down the physical features will help the Court in arriving at a just conclusion as the plaintiffs have no access to 'A' Schedule property other than 'B' Schedule property. The Court below ought to have seen that unless the Court is highlighted about the place in which dispute arose between the parties, the trial Court may not be in a position to ascertain the allegations made in the plaint. Appointment of an Advocate Commissioner to note down the physical features and measure 'B' Schedule property, at any stretch of imagination cannot be termed as an exercise for collecting evidence.

5. It is seen from the records, the revision petitioners have filed an



application seeking appointment of Advocate Commissioner with the directions to note down the physical features in and around the suit property, take necessary measurement and file his report with the plan. It is seen from the records, that the revision petitioners/plaintiffs have been using 'B' Schedule property to reach 'A' Schedule property and other adjacent properties. Whereas, according to the defendant, neither the revision petitioners nor their ancestors using 'B' Schedule property to reach 'A' Schedule property.

6. The main relief sought for by the revision petitioners are to declare that the suit 'B' Schedule cart track as a common cart track, over which the plaintiffs are having an unfettered right of access to reach the suit 'A' Schedule property. After filing the Revision petition, the defendant has filed the written statement, wherein, it is stated that they have denied the fact that 'B' Schedule property is a cart track. There is no dispute as to the possession of 'B' Schedule property and the only dispute between the parties is whether 'B' Schedule property is a common cart track or not? The said disputed fact can be adjudicated by examining the necessary witnesses and by placing



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necessary documents. The Court below finds that the Advocate Commissioner cannot be appointed to collect the evidence to prove the possession and enjoyment of the plaintiffs. It is well settled that the Advocate Commissioner cannot be appointed to collect the evidence of the parties to establish their case, there is no reason warrants interference with the order of the Court below.

7. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

22.10.2025

Index : Yes/No
Speaking order : Yes/No
Neutral Case Citation : Yes/No
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To

The District Munsif Court, Perundurai.

M.JOTHIRAMAN,,J.

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