



WEB COPY

CRP No. 563 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2025

CORAM

THE HONOURABLE MR.JUSTICE P.B. BALAJI

CRP No. 563 of 2025

AND

CMP NO. 3223 OF 2025

1. Kaliappan

S/o. Munusami, Kanavai Pudhur,
Kanavai Pudhur Village, Kadayampatty
Taluk, Salem Dt.

2. Indra

W/o. kaliappan, Kanavai Pudhur,
Kanavai Pudhur Village, Kadayampatty
Taluk, Salem Dt.

3. Nagaraj

S/o. Kaliappan, Kanavai Pudhur,
Kanavai Pudhur Village, Kadayampatty
Taluk, Salem Dt.

4. Deepak

S/o. Kaliappan, Kanavai Pudhur,
Kanavai Pudhur Village, Kadayampatty
Taluk, Salem Dt.

5. Palaniammal

W/o. Gankan, Kanavai Pudhur, Kanavai
Pudhur Village, Kadayampatty Taluk,
Salem Dt.

6. Samikannu



S/o. Gankan, Kanavai Pudhur, Kanavai
Pudhur Village, Kadayampatty Taluk,
Salem Dt.

Petitioner(s)

Vs

1. Santhi
W/o. Chinnaraj, Kanavai Pudhur,
Kanavai Pudhur Village, Kadayampatty
Taluk, Salem Dt.

Respondent(s)

PRAYER

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order in IA No.2 of 2023 in OS No.94 of 2023 on the file of Sub Court, Omalur dated 11.09.2024.

For Petitioners: G.Surya Narayanan

For Respondent(s): M/s.R.Nalliyappan

ORDER

The defendants who are aggrieved by the order of appointment of advocate commissioner at the instance of the plaintiff are before this Court.

2. The suit has been filed for a declaration that the plaintiff is the owner of the suit property and for an injunction to restrain the defendants from



interfering with her peaceful possession.

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3. It is the case of the defendants in the written statement that the parties are closely related and the defendants used to access the portion of the plaintiff's property for reaching their adjoining lands. However, subsequently, in and by a Panchayat Muchilika, the plaintiff has agreed to lease the property for a period of 30 years for consideration, in view of the prohibition to transfer the government lands for said period . According to the Defendants on and from the date of said panchayat muchilika, it is the defendants who are in absolute possession of the entire property.

4. Pending the suit, in view of the averments in the written statement that the defendants are using the pathway inside the plaintiff's property to reach their lands, the plaintiff has chosen to take out an application for appointment of an Advocate Commissioner. The said application was resisted by the defendants; however, the trial court on enquiry, proceeded to allow the application, based on the averments in the written statement.



WEB COPY 5. Mr. G.Surya Narayanan, learned counsel for the petitioner, would state a stay sentence, which has no relevance to the cause of action or the relief sought in the suit, has been taken in isolation, and the trial court erroneously appointed a commissioner. He would refer to the averment in the written statement in this regard and also the findings of the trial court.

6. The learned counsel for the respondent/plaintiff would state that it is the admission of the defendants themselves that they are using a portion of the plaintiff's property. The trial court has rightly allowed the application to ascertain whether they really exists any pathway or not and therefore contended that the order does not require interference and the CRP deserves to be dismissed.

7. I have carefully considered the submissions of the learned counsel on either side and also gone through the pleadings in the suit as well as the impugned order which is under challenge before this court.

8. It is seen that the plaintiff had earlier filed a suit in OS No. 350/2018,



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and based on the assurance that the defendants gave, the plaintiff had chosen to withdraw the said suit; however, thereafter the defendants again caused interference, resulting in the present suit being filed by the respondent / plaintiff. In the present suit, the plaintiff seeks to declare her right over the suit property, claiming that the plaintiff continued to be in physical possession of the suit property.

9. However, by way of written statement, the case put forth by the defendants is that no doubt the plaintiff is the owner of the property, and a portion of land was being utilised by the defendants to access their adjoining lands. However, subsequently there were panchayat proceedings and the parties enter into a muchilika, by which the possession of the entire suit property has been handed over to the defendants, and it is only with the defendants, who are in absolute possession and enjoyment of the same, ever since.

10. It is also the specific case of the defendant's in the written statement that the plaintiff has executed a lease deed for a period of 30 years, confirming that the possession has been handed over to the defendants. It is also the contention of the defendants that only because of a statutory bar for conveyance



of the property for a period of 30 years, a lease came to be executed. The suit is also challenged on the ground of bar under Order II Rule 2 of the CPC.

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11. As regards the appointment of a commissioner, the trial court has proceeded to entertain the application, finding that it is necessary to ascertain the existence of a pathway as claimed by the defendants. Unfortunately the trial court has not read the written statement as a whole, and if it had, it would have become clear that the specific case of the defendants is that earlier there was a pathway running through the plaintiff's property; however, on and from the date of the muchilika, the defendants have alone been in absolute possession and enjoyment. The learned trial court ought not to have appointed the commissioner to find out the existence of the pathway which has been set out in the written statement, which has absolutely no bearing on the issues that are arising for adjudication in the suit.

10. In view of the above, I am inclined to set aside the order of appointment of commissioner. Accordingly, the civil revision petition is allowed. The order dated 11.09.2024 made in IA No.2 of 2023 in OS No.94 of 2023 by the learned Subordinate Judge, Sub Court, Omalur is hereby set aside.



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There shall be no order as to costs. The connected miscellaneous petition is closed.

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jrs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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P.B.BALAJI

jrs

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1.Santhi

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