



WEB COPY



Civil Revision Petition No.2223 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :08.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.2223 of 2024
and C.M.P.No.11739 of 2024

Thangaraj

... Petitioner

VS-

1. Ramesh
2. Murugan
3. Venkatesan

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to fair and decretal order dated 18.08.2023 passed in I.A.No.4 of 2023 in O.S.No.212 of 2022 on the file of the Principal District Munsif, Salem.

For Petitioner : Mr.P.Jagadeesan

For Respondents
1 to3 :Served – No appearance

ORDER

The defendant seeks to challenge the order of the Principal District Munsif, Salem in rejecting the application filed by him for appointing an Advocate Commissioner to note down the physical features and measure



WEB COPY



the petition mentioned property drawn to scale with metes and bounds with the assistance of a qualified surveyor and to file a report.

2. For ease of understanding, the parties are referred to in the same ranking as before the Principal District Court, Salem. The plaintiffs had filed a suit O.S.No.212 of 2022 for a bare injunction. The plaintiffs would submit that they are brothers and their father, Sellamuthu Udayar had got his share out of a partition between himself and his brothers. The property was described in the "B" schedule and measured an extent of 54 cents in Survey No.114/2, Athikaripatti Village. On 07.04.2007, the plaintiff's father had passed away. The plaintiffs were jointly enjoying the said property after the death of their father. The plaintiffs would submit that the property is yet to be subdivided and patta allotted individually.

3. The plaintiffs would submit that the defendant had encroached the suit property on the northern side and this encroachment blocks their free and unrestricted enjoyment of the suit property. They claim to have possessory and easementary rights over the property for more than 40



years. They had orally instructed the defendant not to encroach upon the suit property. However, the defendant refused to pay heed. Therefore, the plaintiffs have come forward with the above suit.

4. A written statement was filed by the defendant refuting the allegations contained in the plaint. It is stated that the defendant had purchased the property from one Raju Udayar under a registered Sale Deed dated 05.06.1986 measuring an extent of 0.35 cents out of 4 acres 39 cents. That apart, the defendant has not purchased the property from the plaintiffs. The plaintiffs were very much aware about the purchased by the defendant 36 years ago and therefore, the suit is barred by limitation. In the light of the disturbances that the plaintiffs had caused to the defendant, the defendant had filed a suit for bare injunction in O.S.No.360 of 2009 on the file of the 1st Additional District Munsif, Salem. Due to the non filing of the written statement and non appearance of the plaintiffs herein who were the defendants therein, an ex-parte decree came to be passed against them on 29.10.2015. After several years, the plaintiffs herein had preferred an application to set aside the ex-parte decree along with Section 5 application. The said



WEB COPY



application was allowed on costs and the ex-parte decree was also set aside by the learned I Additional District Munsif, Salem.

5. The defendant would submit that his property is in no way connected to the plaintiffs' property and there was no necessity to encroach into the same. When the defendant had purchased the property, there was no objection from the plaintiffs' end and the plaintiffs' had also not taken any legal steps against the defendant or his previous vendors. The defendant would submit that the plaintiffs have come to Court on an imaginary cause of action.

6. The defendant had also filed an additional written statement in which he has set out that the suit is bad for non joinder of necessary parties. He would contend that one Ramasamy Udayar had two wives, namely Pappa and Lakshmi. After the demise of the first wife, the said Ramasamy Udayar had married the second wife. In these circumstances, the first wife had a son, Raju Udayar and the second wife had 3 sons, namely, Sellamuthu, Arumugam and Duraisamy. The defendant would submit that after the purchase of 0.35 cents, an extent



WEB COPY

of 0.5 cents was sold to a third party on 15.06.1986. However, the purchaser was not added as a necessary party. Thereafter, a major portion of the suit property was sold and the purchasers were also not brought on record. It is to prove the execution of the legal partition deeds that the necessity has arisen for filing an additional written statement setting out these facts. Thereafter, the defendant has taken out an application for appointment of an Advocate Commissioner to note down the physical features of the suit property.

7. In the affidavit filed in support of the said application, the defendant would set out that while partitioning the property, the children of Ramasamy Udayar had left out Raju Udayar who is also one of the co-sharers of the ancestral property and he along with his brothers, had only partitioned the same. Raju Udayar, Sellamuthu Udayar, Arumugam Udayar and Duraisamy Udayar are entitled to an extent of 0.35 1/2 cents each. The defendant has purchased a property measuring an extent of 35 cents from Raju Udayar comprised in S.No.114/2 by way of a Sale Deed dated 05.06.1986. The defendant is in possession and enjoyment of 30 cents purchased by him and a joint patta was issued in



WEB COPY



his name. After the sale in his favour, Raju Udayar and his family had moved out and settled at Veppur Village in Kallakurichi. The other 3 brothers have fraudulently partitioned the ancestral properties without including Raju Udayar in the year 1986. However, after 1986, no steps have been taken to subdivide the property. The plaintiffs in the written statement in O.S.No.360/2009 have stated that 0.10 cents was encroached by the defendant. However, in I.A.No.3 of 2022 in O.S.No.212 of 2022, the plaintiffs have claimed an extent of 54 cents in S.No.114/2 and the reliefs claimed in the suit O.S.No.360 of 2009 and O.S.No.212 of 2022 are contradictory. The defendant would submit that the plaintiffs are now attempting to grab 30 cents of land purchased by him and the Advocate Commissioner has to be appointed to note down the physical features of the suit property.

8. The plaintiffs have resisted the said application by contending that the Advocate Commisisoner has already submitted his report disclosing that the entire extent of 53 cents belongs to their father, Sellamuthu Udayar. The suit property has been measured by the Surveyor and boundaries stones have also been fixed in the presence of



WEB COPY



the both parties and their respective counsels. The Commisisoner has also mentioned that the defendant had encroached on the northern side of the suit property. The plaintiffs would submit that the defendant has no right to re-measure the suit property which has been in their possession for over 40 years. If the defendant is one of the co-sharers, he cannot challenge the partition deed. Therefore, the plaintiffs sought for rejection of the said application. The learned Principal District Munsif, Salem has also dismissed the said application by contending that the suit property had already been measued and a plan was also submitted. The learned Judge had also observed that the appointment of Advocate Commissioner was sought for only to gather evidence.

9. Heard the learned counsel for the petitioner and perused the materials available on record. Though the notice has been served on the respondents, there is no representation on behalf of them either in person or through counsel.

10. The suit is one for a bare injunction restraining the defendant from encroaching upon the land on the northern side situate in the west-



WEB COPY



Civil Revision Petition No.2223 of 2022

east direction. Earlier, an application in I.A.No.3 of 2022 was filed for the appointment of an Advocate Commissioner and the same was allowed. It is also to be noted that the Advocate Commissioner was appointed to note down the physical features and measure the suit property with the help of a Taluk Surveyor. He has also done so and drawn the measurements to scale and a report dated 08.03.2023 was filed. Totally suppressing the above, the present application has been filed. Since the property has already been surveyed and boudary stones were fixed, there is no necessity to appoint yet another Commissioner to visit the suit property. The learned Principal District Munsif, Salem has rightly dismissed the application and I see no reason to interfere with the same. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn
To,
The Principal District Munsif, Salem.



WEB COPY



Civil Revision Petition No.2223 of 2024

P.T.ASHA, J.,

srn

C.R.P.PD.No.2223 of 2024
and C.M.P.No.11739 of 2024

08.04.2025