

C.R.P.No.677 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.677 of 2025
C.M.P.No.3826 of 2025

1.Kannammal

2.S.Pankajam ...Petitioners

Vs

Samiappan ...Respondent

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleased to set aside the Fair and Final order dated 20.12.2024 in I.A.No.6 of 2024 in I.A.No.2 of 2023 in O.S.No.39 of 2012 on the file of District Munsif Court, Perundurai and allow the Civil Revision Petition.

For Petitioners : Mr.S.Kaithamalai Kumaran

ORDER

Aggrieved defendants are the revision petitioners before this Court.

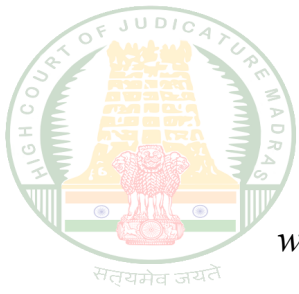


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2.The respondent/plaintiff had filed the suit O.S.No.39 of 2012 for an injunction restraining the defendants their men, agents, etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Along with the suit the respondent/plaintiff had filed an application for appointing an Advocate Commissioner to note down the physical features of the suit property. The application was allowed and the Advocate Commissioner who was appointed had visited the property and filed his report. However, at the time of visiting the property the Advocate Commissioner had failed to serve notice on the petitioners/defendants and this was challenged. Therefore, the defendants had come forward with an application in I.A.No.819 of 2015 to reissue the Commissioner's warrant. The same was dismissed, against which the defendants herein had filed C.R.P.No.2671 of 2016. The said Civil Revision Petition was allowed with the following directions:-

6.In view of the above reasons, the order dated 25.01.2016 passed in I.A.No.819 of 2015 in O.S.No.39 of 2012 on the file of the District Munsif-cum-Judicial Magistrate, Perundurai, is hereby set aside and the trial Court is directed to re-issue the Commissioner Warrant to the same Advocate Commissioner to measure the suit property with the help of Government Surveyor as per F.M.P sketch which was marked as Ex.B1 and file a report and plan within a period of four



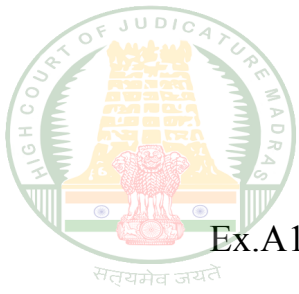
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weeks from the date of receipt of a copy of this order. On receipt of the said Advocate Commissioner's report, the trial Court is directed to complete the trial within a period of three month from the date of receipt of copy of the Advocate Commissioner's report. Pursuant to this order the Advocate Commissioner had visited the property and submitted the plan.

3. Thereafter the respondent/plaintiff had filed I.A.No.2 of 2023 on the file of the District Munsif, Perundurai, for appointing an Advocate Commissioner to take the measurements as per the documents of title produced on the side of the respondent/plaintiff and also measure the defendant's property and file a report and plan. Meanwhile the defendants had filed a counter claim as well. This application was rejected. The respondent/plaintiff had challenged the dismissal of I.A.No.2 of 2023 in C.R.P.No.3613 of 2023. This revision was allowed on the ground that the suit had been filed in the year 2012 and the property has to be measured since if an opportunity is not granted, the respondent/plaintiff's valuable right would be defeated.

4. Once again the petitioners/defendants had filed I.A.No.6 of 2024 to order the Advocate Commissioner to measure the suit property as per



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Ex.A1, A2 and A3 and file a report along with the surveyor's plan. In the affidavit filed in support of the said petition, the petitioners/defendants would clearly state that they had issued a memo of instruction to the Advocate Commissioner asking him to measure as per Ex.A3 and Ex.A1 and Ex.A2. He refused as the warrant states that the property has to be measured on the basis of the sale deed of the plaintiff Ex.A3. As per the parental deed of the plaintiff that is Ex.A1 and Ex.A2, the vendor of the plaintiff was entitled to only an extent of 3513 $\frac{3}{4}$ sqft. In Ex.A3 the vendor of the plaintiff executed a sale in respect of an extent of 3812 $\frac{1}{2}$ sqft which is over and above an extent of 298 $\frac{3}{4}$ sqft. It was for this reason that the petitioner/defendant had filed the instant application.

5.The learned District Munsif, Perundarai, by her order dated 20.12.2024 was pleased to dismiss the said application by stating that the dispute between the petitioners/defendants and the respondent/plaintiff is whether the petitioners are in possession or the respondent. These details can be submitted through documents and that apart it is always open to the petitioners to cross examine the Advocate Commissioner. Ultimately, the application was rejected against which the Civil Revision Petition is filed.



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WEB COPY 6. Heard the learned counsel for the petitioners and perused the records.

7. The suit is one for a bare injunction. It is clear that the parties are trying to collect evidence through the Advocate Commissioner from the number of applications for appointment of Advocate Commissioner filed by both sides. The Advocate Commissioner has visited the property twice and submitted his report. The Court below has rightly observed that it is open to the parties to cross examine the Advocate Commissioner on the basis of their documents of title. Further the suit is one for a bare injunction where Advocate Commissioner cannot be appointed to decide possession. Therefore, in the above circumstances, the observations of the learned District Munsif, Perundari, while rejecting the interlocutory application is very much in order and I see no reason to set aside the same.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No



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Internet : Yes/No

Speaking Order/Non Speaking Order

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P.T.ASHA, J,

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To

The District Munsif Court, Perundurai

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