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Civil Revision Petition No. 1638 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.1638 of 2025
and C.M.P.No.9645 of 2025

1. Vasanthavathi @ Vahitha
2. Boopalan
3. Padmavathy
4. Sathyavathy
5. Balakrishnan

... Petitioners

Vs

1. Devi
2. Suresh Balu
3. Raguraman
4. Mahalingam
5. Nandhi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order of the District Munsif Court, Sathyamangalam in I.A.No.9 of 2024 in O.S.No.94 of 2022 dated 30.08.2024.

For Petitioner

: Mr.J.Franklin



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ORDER

Challenging the order passed by the learned District Munsif, Sathyamangalam in I.A.No.9 of 2024 in O.S.No.94 of 2022, the plaintiffs are before this Court.

2. The order which is the subject matter of revision is an order rejecting the plaintiffs' request for appointing an Advocate Commissioner. The brief facts which are necessary for disposing of this Civil Revision Petition are herein below set out. The parties are referred to in the same ranking as before the trial Court.

3. The plaintiffs had filed the aforesaid suit for permanent injunction. The plaintiff would contend that they are owners of the land measuring an extent of 6.50 acres in S.F.No.233/5 (Old No.S.F.No.5) in Devarnatham, Hasanur Village, Talavady Taluk, Erode. The defendants, who are having lands to the South of the plaintiffs' land, have been attempting to tamper with the boundary line and are attempting to encroach into the suit schedule property. He would further contend that on 01.05.2022, the defendants had attempted to encroach into the suit



property and the same had been successfully prevented. A mediation by the village elders was also attempted. Since the threat continues, the plaintiff has come forward with the suit in question.

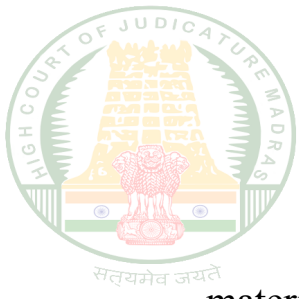
4. The 4th defendant had filed a written statement *inter-alia* denying the various allegations contained in the plaint. The 4th defendant would submit that the plaintiffs neither have title nor are in possession of the suit property. It is the defendants 4 and 5 who are the joint owners of the suit property pursuant to a Sale Deed Dated 27.06.1983 executed by one Kullappan, S/o. Bellae Gowder and others in their favour. The defendants 4 and 5 who were then minors were represented by their respective fathers. The defendants 4 and 5 would submit that the revenue records have been mutated in respect of S.F.No.233 after he had attained majority. The 1st defendant's husband Subramani, who is the father of defendants 2 and 3, as Power Agent of his mother Ponniyammal, had filed a collusive suit in O.S.No.33 of 2008 on the file of the District Munsif, Sathyamangalam for a permanent injunction in respect of the suit property as well as other survey fields. The defendants 4 and 5 had contested the suit and the same was dismissed on 28.06.2012. Against the said



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judgment and decree, the said Ponniyammal had filed an appeal in A.S.No.42 of 2013 on the file of the Sub Court, Sathyamangalam and the same was dismissed for default on 29.10.2013. Thereafter, they have not taken any steps to restore the appeal. Therefore, the title of defendants 4 and 5 has attained finality in the earlier proceedings. The defendants had also stated that the description of the property as set out in the plaint is incorrect, since the land within the boundaries mentioned therein was only an extent of 4.00 acres and not 4.06 acres. The northern boundary is the remaining land of Ponniyammal and not the remaining land of Poyappa. The southern boundary is a Pallam Poromboke and the land of Madhae Gounder and others and not a pattai poromboke and the land of Madhae Gowda and others. Therefore, the defendants prayed for dismissal of the suit.

5, When the suit was posted for trial, the application for appointment of an Advocate Commisisoner has been filed by the plaintiffs. The learned District Munsif, Sathyamangalam by her order dated 30.08.2024 was pleased to dismiss the application. Aggreived by which, the plaintiffs are is before this Court.



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6. Heard the learned counsel for the petitioner and perused the materials available on record.

7. A perusal of the records and the order of the learned District Munsif would indicate that, at the time of trial, an application has been filed for appointment of an Advocate Commissioner. It is also seen that earlier, a similar application for Advocate Commissioner was filed in I.A.No.2 of 2010 which was dismissed and no revision was filed against the said order. Be that as it may, the suit is one for bare injunction and the plaintiffs claim a right to the property on the basis of a partition. The defendants have in their written statement taken out a defense that the property has not been properly described and that the boundaries and the extent have also not been properly set out. Thereafter, the application for appointment of an Advocate Commissioner has been filed by the plaintiffs and the reasons stated for taking out the application is that the boundary line had been obliterated by the defendants, who are occupying a portion of their lands. Therefore, it has become necessary to fix the boundary line. They would submit that they are not in a position to ascertain the lie of their lands and that this can be done only with the assistance of a surveyor. A



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mere perusal of the application for appointment of an Advocate Commissioner would indicate that the plaintiffs are attempting to gather evidence. The Advocate Commissioner cannot be used to gather evidence. The plaintiffs, who have come to Court seeking relief on the basis of certain documents and averments, are bound to prove their case and cannot utilise the Advocate Commissioner for finding out the possession. That apart, the earlier application filed by them was dismissed which was not challenged further. The trial Court has rightly rejected the same and I see no reason to interfere with the same. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

The II Additional Sub Court, Erode, Erode District.



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P.T.ASHA, J.,

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