



C.R.P.Nos.2205 & 2208 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.Nos.2205 & 2208 of 2024
C.M.P.Nos.11683 & 11686 of 2024

Murugesan

...Petitioner in
C.R.P.No.2205 of 2024

Mallika

...Petitioner in
C.R.P.No.2208 of 2024

Vs

P.Perumalsamy (Died)

1.Thangavel

2.Tamilarasi

3.Viswanathan

4.Murugesan

...Respondents
in both C.R.P's

PRAYER in C.R.P.No.2205 of 2024:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and final order dated 04.11.2023 made in I.A.No.1 of 2023 in O.S.No.266 of 2021 on the file of the learned Additional Subordinate Judge, Tirupur.



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PRAYER in C.R.P.No.2208 of 2024:- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and final order dated 04.11.2023 made in I.A.No.6 of 2023 in O.S.No.268 of 2021 on the file of the learned Additional Subordinate Judge, Tirupur.

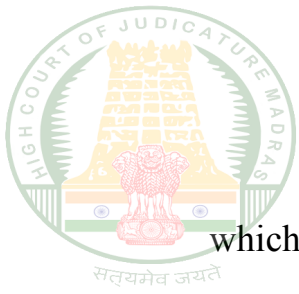
In Both C.R.P's:-

For Petitioner : Mr.N.Manojkumar
For Respondents : Mr.R.Venkata Raman

ORDER

The above civil Revision Petitions are filed challenging the order of the Additional Subordinate Judge, Tirupur, dismissing the applications filed by the respective petitioners seeking appointment of an Advocate Commissioner to inspect, to note down physical features and measure the petition mentioned properties with the assistance of Town Sub Inspector of survey (North) Corporation office, Tirupur.

2.C.R.P.No.2205 of 2024 is filed by the plaintiff in the suit O.S.No.266 of 2021 in which he had taken out an application for appointment of an Advocate Commissioner in I.A.No.1 of 2023. C.R.P.No.2208 of 2024 is filed by the plaintiff in O.S.No.268 of 2021 in

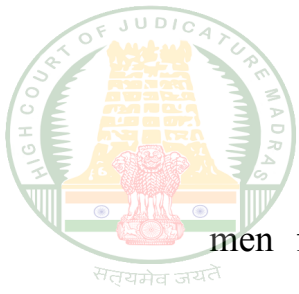


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which she had filed an application in I.A.No.6 of 2023 for appointment of an Advocate Commissioner had been dismissed.

3.The facts in both the cases are more or less similar. O.S.No.266 of 2021 was filed for declaring the plaintiff therein, who is the petitioner in C.R.PNo.2205 of 2024, as the absolute owner of the B schedule properties and for a consequential injunction restraining the defendants, his men, servants, agents etc., from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Similarly O.S.No.268 of 2021 was filed seeking the relief that the plaintiff therein is the absolute owner of the B schedule property measuring 4 ½ feet East-West width and 26 feet North South from the southern boundary of the property and western side of her constructed house which has been encroached by the defendants and for a mandatory injunction directing the defendants to remove that. The defendants in both the suits are the same. The plaintiffs in these suits have property on either side of the defendant's property.

4.It appears that the defendants/respondents herein had also filed a suit O.S.No.556 of 2015 seeking a declaration of their title to the suit property and for injunction restraining the petitioners herein and their



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men from in any way interfering with his peaceful possession and enjoyment of the lands. All the three suits have been taken up for joint trial. It appears that in the suit O.S.No.556 of 2015 the plaintiff therein who is the defendant in the other two suits had taken out an application for appointing an Advocate Commissioner to note down the physical features and with the help of town surveyor and to submit the report. The Advocate Commissioner has also inspected the property and has submitted a report. Apparently, there has been no objections filed to the said report by the revision petitioners herein. However, thereafter they have come forward with these applications for appointing an Advocate Commissioner to inspect and note down the physical features.

5.The applications in I.A.Nos.1 & 6 of 2023 have been dismissed on the ground that since the three suits are tried together and in one of the suits the Advocate Commissioner has been appointed and has submitted report, there was no necessity to once again appoint an Advocate Commissioner as this report would be sufficient to decide the alleged encroachments. Challenging the same the petitioners have filed the above Civil Revision Petitions.



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6.The learned counsel appearing for the petitioners would further submit that they are aggrieved by the fact that the Advocate Commissioner has only measured the property of the plaintiff in O.S.No.556 of 2015 and has not measured the property of the plaintiffs in O.S.Nos.266 and 268 of 2021. The learned counsel would submit that only if all the three properties are measured the encroachment can be identified. The learned counsel for the petitioners would submit that in his evidence as P.W.1, the plaintiff in O.S.No.556 of 2015 has admitted that the petitioners are in possession of the properties purchased by them.

7.The counsel for the respondents on the other hand would submit that it is the petitioners herein who have not participated in the proceedings of the Advocate Commissioner despite notice to them. He would draw the attention of the Court to the report of the Advocate Commissioner where he has stated that despite notice, the counsel for the defendants/petitioners herein had not been present. Further in the very same report it has been stated that the petitioners herein had not cooperated in the inspection by giving their documents of title to enable measurement. Therefore he would submit that the present application is misconceived.



WEB COPY 8.Heard the learned counsel on either side.

9.No doubt there has been a lapse on the part of the petitioners by not participating in the earlier Advocate Commissioner's proceedings. From the very reading of the Commissioner's report it is seen that the Advocate Commissioner has not had the benefit of the documents of title of the petitioners and has based his report only on the documents of title of the respondents herein. Therefore, in order to assist the Court to arrive at a conclusion it would be appropriate to reissue the warrant to the Advocate Commissioner appointed in I.A.No.655 of 2019 in O.S.No.556 of 2019 on the file of the Principal Subordinate Court, Tiruppur.

10.Therefore, the Civil Revision Petitions are disposed of with the above direction and with directions to the Advocate Commissioner appointed by order in I.A.No.655 of 2019 to note down the physical features and measure the properties of the plaintiffs in O.S.No.556/2015, 266 of 2021 and 268 of 2021 with the help of Taluk Surveyor and taking into account their respective documents of title, submit a report into the court. No costs. Consequently, connected miscellaneous petitions are



closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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To

The Additional Subordinate Court, Tirupur.



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