



C.R.P.No.1124 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 21.03.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

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C.M.P.No.6614 of 2025

1.Kamalarani

2.Arun Prabhu

3.Kanmani

4.Anaimuthu

...Petitioners

Vs

1.Varadarajan

2.Arul Prakasam

3.Siva

...Respondents

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the petition order dated 20.01.2025 passed by the learned Subordinate Judge, Attur, in I.A.No.2 of 2023 in O.S.No.426 of 2023.

For Petitioners : Mr.L.Mouli



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ORDER

Challenging the rejection of their application for appointment of an Advocate Commissioner to survey the suit property and note down the physical features, the plaintiffs are the petitioners before this Court.

2.The plaintiffs had filed suit O.S.No.426 of 2023 on the file of the learned Subordinate Judge, Attur, to declare their right and title to the suit property by way of an adverse possession and to declare the registered partition deed dated 25.09.2023 between the defendants as null and void and not binding on the plaintiffs and to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3.The short facts are as follows:-

It is the case of the plaintiffs that S.No.264/1 measuring an extent of 3.96.0 hectares was their ancestral property. The first plaintiff's husband Periyasamy had purchased an extent of 27 cents in S.No.261/3 and an extent of 36 cents in S.No.264/2 in the Keeripatty Village from



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one Subramaniya Iyer under a registered sale deed dated 12.03.1986. The said Subramaniya Iyer in turn had been enjoying the property from the year 1963. This property and the ancestral properties are situate adjacent to each other and after Subramaniya Iyer, plaintiffs continued to be in peaceful possession and enjoyment of the same. She would contend that her husband had installed an electrical service connection for the well along with the motor pump set and stone wall was constructed in the year 1987 on the eastern side of S.No.265/1 and S.No.261/2A in order to fix the boundary line of the property on the eastern side. The suit property was being enjoyed jointly with other survey numbers as agricultural lands. On 27.05.2014, Periyasamy died by leaving behind him the surviving plaintiffs 1 to 3 as his legal representatives. The first plaintiff is the wife and plaintiffs 2 and 3 are his children and fourth plaintiff is the brother. The plaintiffs would contend that they have been in continuous and uninterrupted possession of the property and therefore prescribed title by an adverse possession.

4.The first defendant had created a partition deed with his sons defendants 2 and 3 on 25.09.2023 without having any right and title to the suit property with the sole intention of grabbing the same. The



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partition deed is a fabricated document. After executing the partition deed defendants had attempted to change the revenue records for which the first plaintiff had given an objection petition on 05.10.2023. On 15.10.2023, the defendants along with their men and agents attempted to damage the stone well and motor pumps, this was successfully prevented by the plaintiffs. Therefore, the plaintiffs had come forward with the suit in question.

5.The defendants had filed a written statement denying the plaintiff's case and contending that the suit property had been assigned to the first defendant under a proceeding dated 18.04.1977 in A.M.No.933 of 1386 by the Thasildar, Attur and from the date of the assignment the defendants are in possession and enjoyment of the suit property to the knowledge of all concerned. The patta has also been mutated in the name of the first defendant in patta No.939. The plaintiffs on the contrary are strangers to the suit property and suit has to be dismissed in limini. The defendants would submit that plaintiffs has no locus standi to seek the declaratory relief in respect of the partition deed entered into between the defendants.



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6. Pending the suit the plaintiffs had come forward with the application in question. In the affidavit filed in support of the petition the plaintiffs had simply stated that the panchayatars had advised them to seek protection and remedy through Court of law and therefore Advocate Commissioner may be appointed to visit the property, survey the land with an assistance of qualified surveyor and note down the existing physical features and direct them to file a report.

7. The said application has been objected to by the defendants who would contend that the entire exercise is only to collect evidence. The learned Subordinate Judge Attur, after hearing the parties proceeded to dismiss the application and challenging the same the revision has been filed.

8. Heard the learned counsel for the petitioner and perused the records.

9. The plaintiffs had come to Court seeking a declaration not of their title but to declare the partition deed executed amongst the defendants as null and void. Further the entire case of the plaintiffs rests



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on the plea of adverse possession. In the affidavit filed in support of the impugned petition no reasons whatsoever are given for seeking an appointment of an Advocate Commissioner. That apart since the plaintiffs are claiming right through adverse possession, it is crystal clear that the requirement of the prayer for appointment of an Advocate Commissioner is only for collecting evidence. Plaintiffs has to first prove their right to claim relief to the property independent of the Commissioner's report. Therefore, the learned Judge has rightly rejected the application I.A.No.2 of 2023 in O.S.No.426 of 2023 and I see no reason to interfere with the same.

10.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

21.03.2025

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

The Subordinate Court, Attur,

P.T.ASHA, J,

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