

CRP NO.1777 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 22 / 11 / 2024

ORDER PRONOUNCED ON : 10 / 03 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.1777 OF 2023

AND

CMP NO.11541 OF 2023

- 1.Manogaran
- 2.Aarayee
- 3.Kannammal
- 4.Govindasamy
- 5.Murugan
- 6.Shanmugam

Chinnasamy (Died)
S/o. Palani

- 7.Perumal
All are residing at Morampatti Colony,
R.C.Chettipatti Post, Omalur Taluk,
Salem District.

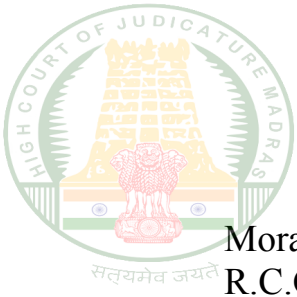
... Petitioners /
Petitioners /
Defendants

(Cause title accepted vide Court Order dated
27.04.2023 made in CMP No.8696/2023
in CRP SR.No.37681/2023)

Versus

- 1.Govindasamy
 - 2.Vengatachalam
- Both are residing at Door No.8/79

... Respondents /
Respondents /



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Plaintiffs

Moramppampatti Colony,
R.C.Chettipatti Post, Omalur Taluk,
Salem District.

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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.98 of 2019 in O.S.No.316 of 2015 dated April 22, 2021 on the file of the District Munsif Court, Omalur.

For Petitioners : Ms.Jayasudha Suryanarayanan

For Respondents : Served – No appearance

ORDER

This Civil Revision Petition is directed against the order dated April 22, 2021, passed in I.A.No.98 of 2019 in O.S.No.316 of 2015 by the District Munsif Court, Omalur.

2.The revision petitioners herein are the defendants, and the respondents herein are the plaintiffs in O.S.No.316 of 2015 on the file of District Munsif Court, Omalur.

3.For the sake of convenience, the parties herein will be referred to as per their array in the Original Suit.



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4. The plaintiffs claim that the suit property originally belonged to their father. After their father's demise, they have been in possession and enjoyment of the suit property. The defendants allegedly attempted to interfere with their peaceful possession and enjoyment of the Suit Property. Hence, the plaintiffs filed a suit for permanent injunction to restrain the defendants from interfering with their possession and also sought for costs.

5. The defendants filed a written statement, denying the plaintiffs' right and title over the suit property. They further stated that Survey No. 86/2A and 86/2B belong to them, and they have constructed a house there and are residing in it. The defendants claim that the suit property belongs to them and that the plaintiffs are in possession of a portion of Survey Nos. 86/2D and 86/2C only as permissive occupants.

5.1. In order to determine the lie and location of the suit property, the defendants sought for appointment of an Advocate Commissioner along with a Surveyor to note the physical features and measure the Suit Property. Accordingly, they filed an Interlocutory Application in I.A. No. 98 of 2019.



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6. The Trial Court, after hearing both sides, concluded that the Interlocutory Application was filed solely for the purpose of collecting evidence through the Advocate Commissioner's report and plan, which is not permissible. Accordingly, the application was dismissed.

7. Aggrieved by this order, the petitioners/defendants have preferred this Civil Revision Petition.

8. The learned counsel for the revision petitioners/defendants argued that measuring the suit property is essential to resolve the dispute and therefore, the appointment of an Advocate Commissioner to note the physical features and to measure the Suit Property is necessary. However, the Trial Court dismissed the application without considering this aspect. Accordingly, he prayed for the Civil Revision Petition to be allowed.

9. Per contra, the learned counsel for the respondents/plaintiffs submitted that the suit property belongs to the plaintiffs, and they are in possession and enjoyment of it. He contended that if the property truly belonged to the defendants, they could prove their alleged title and possession through documentary and oral evidence. He further argued that the Interlocutory Application was filed merely to delay the proceedings and



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reiterated that the appointment of an Advocate Commissioner to collect evidence is impermissible. Accordingly, he prayed that the order of the Trial Court be upheld.

10. This Court has considered the submissions made by both parties and perused the materials available on record.

11. The plaintiffs filed a suit for bare injunction against the defendants, stating that the suit property originally belonged to their father. After their father's demise, the plaintiffs claim to be in possession and enjoyment of the Suit Property. However, the defendants contend that they are in exclusive possession and enjoyment of the suit property and have denied the plaintiffs' title through their father. In these circumstances, the key question is whether the plaintiffs are in possession and enjoyment of the Suit Property as claimed, or it is the defendants who are in possession and enjoyment as alleged.

12. It is a settled law that an Advocate Commissioner cannot determine who is in possession and enjoyment of the suit property. The parties to the Suit must establish their claim of possession through oral and documentary evidence.



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13. In these circumstances, this Court finds no irregularity or

illegality in the Trial Court's order. Accordingly, the Civil Revision Petition is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

10 / 03 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To
The District Munsif Court
Omalur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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