



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-06-2025

CORAM

THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN

CMP No. 7228 of 2023

IN

SA NO. 524 OF 2009

Govindaraj (died)

1.Karunamurthi

2.Dayalan

3.Neelamegam

4.Marikozhundhu

5.Sundaravadivelu

6.Raman

7.Suseela

8.Raja

Petitioners / Respondents

Vs

1.Mahendran

2.Neelakandan

Respondent / Appellant

Respondent / Respondent

For Petitioner:

Mr.Nissar Hussain For P1,
Mr.A.Seshan for P2 to P8

For Respondent:

Mr.K.Thangavelu

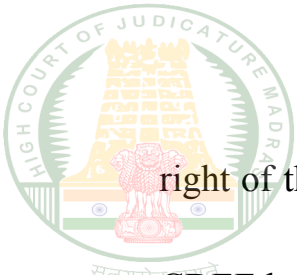


ORDER

WEB COPY

The 1st defendant in O.S.No.1 of 2002 on the file of the District Munsif cum Judicial Magistrate Court, Arcot, is the appellant herein. O.S.No.1 of 2002 had been filed by the 1st respondent herein, Govindaraj who died and his legal representatives had been brought on record as 1st to 8th respondents against the appellant herein seeking declaration of right, title and interest over the disputed ABEF property and for mandatory injunction directing the defendant to remove the structure put up by him in the ABCD portion and put the plaintiff in possession thereof and for permanent injunction with respect to ABEF of the suit property. In the schedule to the plaint, the property had been described as land and building measuring 3235 sq.ft at Pootuthakku Village in Walaja Taluk in Vellore District now Ranipet District.

2.In the written statement, the defendant, who is the appellant herein, had claimed title over the property and further claimed that he had left vacant possession on the eastern side and western side which are vacant and which have been used as cattle shed and in which place, the defendant claimed that he had a right to put up his own building and that the plaintiff cannot question that



WEB COPY

right of the defendant. It had therefore been claimed that portions in ABEF and CDEF belong to the defendant and that there was no necessity to the defendant to trespass into ABCD portion. During trial, the documents marked were A1 to A3 which were the documents filed by the plaintiff including the original sale deed dated 31.05.1985 and settlement deed dated 26.10.1953 and also the document filed on behalf of the defendant which also included settlement deed dated 26.10.1943 / Ex.B1 and a sale deed dated 15.04.1971 / Ex.B2 and a further sale deed dated 21.03.1979 / B3 and a mortgage deed dated 07.11.1984 / Ex.B4.

3.Both the plaintiff and the defendant had examined themselves as witnesses and quite apart from them, an Advocate Commissioner had been appointed who had been examined as PW-2 and his report and sketch had been marked as Exs.C1 and C2.

4.On the basis of the evidence tendered and on reading the pleadings, the trial Court had held by judgment dated 29.11.2006 that the plaintiff was not entitled for declaration so far as the portion marked as ABEF is concerned and therefore, refused to grant the consequential relief of permanent injunction and



also declined to grant the relief of mandatory injunction. In effect, the suit was dismissed in entirety. The plaintiff then filed A.S.No.16 of 2007, which came up for consideration before the Sub Court, Ranipet and by judgment dated 16.10.2008, the First Appellate Court had examined the report of the Advocate Commissioner which had been filed as Ex.C1 and noted that the Advocate Commissioner had also given his opinion on possession of the property and had therefore, on the basis of such report, had granted declaration with respect to ABEF portion and permanent injunction with respect to that particular portion also.

5.This necessitated the 1st defendant to file the Second Appeal. The primary substantial questions of law surrounded the reliance placed by the First Appellate Court on the report of the Advocate Commissioner relating to possession.

6.A learned Single Judge of this Court when the Second Appeal came up for hearing by an order dated 21.04.2023 had observed that the boundaries and extent had been given in both the properties in cents, whereas the Commissioner had given his report on the basis of ares and co-relation would not be possible to

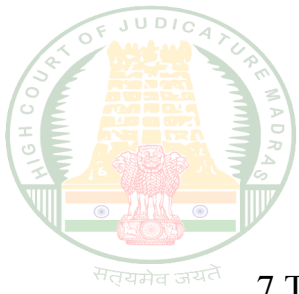


the specific extent. He had also observed that the entire dispute is on the piece of land marked ABCD and CDEF. In view of that particular fact, the learned

Single Judge had appointed a fresh Advocate Commissioner by consent of both parties and had also observed as follows as given in the remit to the

Commissioner:

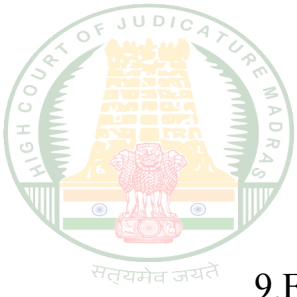
“5.The Advocate Commissioner is requested to survey the property in S.No.471/A. He shall take the assistance of the Taluk Surveyor and measure the property and give a report with respect to the extent of the property in feet. The Advocate Commissioner shall first measure the property on the basis of Ex.B-2, dated 15.04.1971. Thereafter, he shall measure the property on the basis of Ex.A-1, dated 05.06.1985. Reliance can be placed on the revenue records which stood on the date of execution of Ex.A-1, which is 05.06.1985 and not using the thoraya patta. Such other documents which the Advocate Commissioner and the Taluk Surveyor feel are essential for the purpose of measuring the property may be relied upon. The report shall be submitted to this Court on or before 19.06.2023. The report shall precisely state the length of the plaintiff's property and the length of the defendant's property. The boundaries of both the properties and the measurement shall be given in feet and the extent in cents.”



WEB COPY

7.The learned Advocate Commissioner had filed a report, the original of which is available in the Court. Objections have also been filed to the said report by the 1st respondent herein. But however, once a further report is filed and objections are also raised, it would only be appropriate that the parties are given an opportunity of examining the Advocate Commissioner on the basis of which he had given the report and to explain the objections raised by the parties.

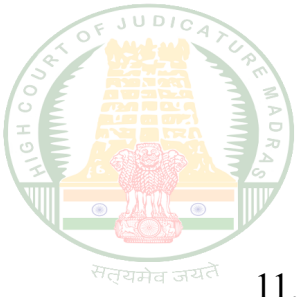
8.Incidentally, the respondents have also filed C.M.P.No.7228 of 2023 under Order 41 Rule 27 read with Section 151CPC seeking to introduce a fresh document namely, Manaivari Thoraya Patta and had urged necessity to produce this particular document as evidence before this Court. If a document is to be converted as evidence, it would have to cross the stages of admissibility, proof and relevancy and that is an issue which could be best decided by the document being marked, not by consent, but through a witness who could speak about the document and also explain as to why the same had not been brought about earlier.



WEB COPY

9. For both these aspects, recording of evidence is required. The Advocate Commissioner is a resident of Ranipet and the counsels there would be in a better position to cross examine the witnesses on the patta which is sought to be introduced since they would know the lay of the land. It would only be appropriate that the matter is remanded back for the limited purpose of marking documents now produced under Order 41 Rule 27 CPC, namely, Manaivari Thoraya Patta No.160 issued by the Zonal Deputy Tahsildar dated 12.07.1933 as further document on behalf of the respondents herein / plaintiff in the suit and also examine the Advocate Commissioner as Court witness. The Trial Court may note that the Advocate Commissioner earlier appointed was examined as PW-2 but the Commissioner appointed by this Court may be examined as CW-1 and the report and connected documents may be marked as further Court exhibits.

10. With the above observations, this petition stands allowed. The Second Appeal is kept pending awaiting report from the District Munsif cum Judicial Magistrate Court, Arcot.



WEB COPY

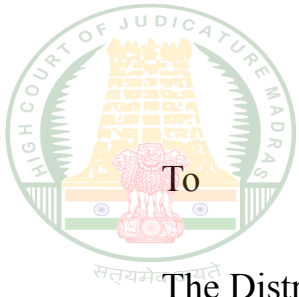
11.The Registry may therefore, forward the entire records back to the Trial Court / District Munsif cum Judicial Magistrate Court, Arcot, for recording of further evidence in O.S.No.1 of 2002. The Trial Court may mark the Manaivari Thoraya Patta through further witness and also issue summons to the learned Advocate Commissioner Mr.P.Srikanth and examine him as a Court witness. After recording the evidence in entirety, the entire records including the evidence recorded may be forwarded back to this Court. The entire process may be completed on or before 08.08.2025. The Registry may endeavour to forward the entire records to the District Munsif cum Judicial Magistrate Court, Arcot, on or before 08.07.2025.

27-06-2025

Index:Yes/No

Speaking/Non-speaking order

Neutral Citation:Yes/No



To

The District Munsif cum Judicial Magistrate Court, Arcot.

WEB COPY



WEB COPY

10

CMP No. 7228 of 2



C.V.KARTHIKEYAN J.

**CMP No. 7228 of 2023
IN SA NO. 524 OF 2009**

27-06-2025