



C.R.P. Nos. 1293 and 1755 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 27.11.2024

Pronounced on : 19.03.2025

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P. Nos. 1293 and 1755 of 2023

and

C.M.P. Nos. 8684 and 11406 of 2023

In both C.R.Ps.

R.Sivakumar

... Petitioner / Petitioner / Plaintiff

Vs.

A.Arokia Mary

... Respondent/ Respondent/ Defendant

COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.Nos.867 and 868 of 2014 in O.S. No.89 of 2012 dated 27.10.2022 on the file of the Principal District Munsif Court, Villupuram and to eschew/strike off the report/plan of the Advocate-Commissioner in I.A. No.395 of 2012 in O.S. No.89 of 2012.

For Petitioners : Mr.M.Arumugam
(in both C.R.Ps.)

For Respondent : NA
(in both C.R.Ps.)



C.R.P. Nos. 1293 and 1755 of 2023

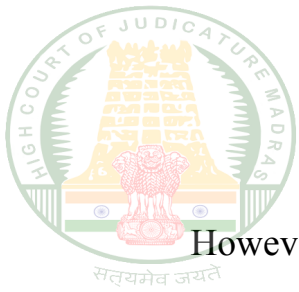
COMMON ORDER

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These Civil Revision Petitions have been preferred as against the order dated 27.10.2022 passed in I.A. Nos.867 and 868 of 2014 in O.S. No.89 of 2012 on the file of the Principal District Munsif Court, Villupuram, wherein the petitioner has filed petitions before the Trial Court to strike off the report / plan of the Advocate-Commissioner in I.A.No.395 of 2012 in O.S.No.89 of 2012 and to inspect and locate the suit property according to old and new revenue records and the same were dismissed by the Trial Court.

2. The petitioner is the plaintiff and the respondent is the defendant in the main suit in O.S.No.89 of 2012 filed for declaration and for permanent injunction.

3. The petitioner, who is the plaintiff, filed I.A. No. 395 of 2012 in O.S. No.89 of 2012 under Order XVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, sought for the appointment of an Advocate-Commissioner to measure the suit property along with adjacent property and and locate the suit schedule property with the help of Surveyor and the other Revenue Officials. The Trial Court, after hearing both sides, appointed Mr.D.Sasikumar as Advocate-Commissioner for the aforesaid purposes.



C.R.P. Nos. 1293 and 1755 of 2023

WEB COPY

However, according to the petitioner/plaintiff, the Advocate-Commissioner failed to measure the property as per the old revenue records. He did not obtain relevant records from the Revenue Department. The petitioner/plaintiff suspects collusion between the Advocate-Commissioner, Revenue Officials, and the respondent/defendant, as they are allegedly related or associated. The report submitted by the Advocate-Commissioner are vague and ineffective, failing to execute the order of the Court. Therefore, the petitioner seeks to strike off the Advocate-Commissioner's report. Hence, the petitioner filed petitions in I.A. Nos.867 and 868 of 2014 in O.S. No.89 of 2012 before the Trial Court.

4. The respondents filed a counter before the Trial Court, firmly denying the petitioner's claims regarding the suit property's history and subdivision, arguing that the alleged conversion of Survey Nos. 133/3, 133/1, 131/5, 131/2, and 132/6 into Survey Nos. 21/3B and 21/3B3 is entirely false. The respondent assert that no such subdivision is reflected in the official revenue records, challenging the petitioner's assertion about the land's existence. Regarding the role of the Advocate-Commissioner, the respondent refutes the petitioner's claim that an Advocate-Commissioner, along with Revenue Officials, must verify old records to locate the suit property. The



C.R.P. Nos. 1293 and 1755 of 2023

WEB COPY

respondent emphasize that the previously appointed Advocate-Commissioner had already conducted an inspection and categorically reported that no such survey number (21/3B3) exists in the revenue records. Since the suit property could not be found during the prior investigation, the respondent argue that further attempts to re-examine the matter are unwarranted.

5. The respondent strongly opposes the appointment of a fresh Advocate-Commissioner, stating that such a request is merely an attempt by the petitioner to prolong the proceedings. The respondent further argue that the petitioner ought to provide accurate details of the suit property, instead he trying to “find a fish in a muddy pond” by requesting repeated inspections, which is not permissible under the law. The respondent deny the petitioner’s claim that old revenue records are in the custody of the Tahsildar, Villupuram, arguing that the petitioner must first produce and correlate old and new revenue records to substantiate the existence of the suit property. The respondent further contend that before considering the appointment of a new Advocate-Commissioner, the petitioner should first produce and correlate old and new revenue records to substantiate the existence of the suit property. The burden of proof lies with the petitioner, and without clear documentary evidence, any further proceedings would be futile. The respondent further



C.R.P. Nos. 1293 and 1755 of 2023

alleges that the suit property, as described in the plaint, is entirely imaginary.

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They argue that the survey numbers, extent, and boundaries mentioned by the petitioner do not match any existing land records. Since the Advocate-Commissioner's previous investigation failed to locate the property, the respondent insist that the claim is fabricated and lacks any legal standing. Finally, the respondent accuses the petitioner of employing delaying tactics to obstruct the legal process and cause undue hardship. The respondent further argue that the petition has been filed with the sole intention of prolonging the proceedings, creating unnecessary complications, and inflicting financial and mental distress upon the respondent. As a result, the respondent firmly assert that the petition is baseless and must be dismissed outright. Therefore, the petition is not maintainable and the same is liable to be dismissed.

6. The Trial Court, after hearing both sides, dismissed the petitions. Against which, the present Civil Revision Petitions are filed.

7. The learned counsel appearing for the petitioner submits that the petitioner filed O.S. No.89 of 2012 for a declaration and permanent injunction over the suit property. The Trial Court appointed an Advocate-Commissioner to inspect and report on the suit property, but his report, which is submitted on 21.03.2014 is vague and failed to verify old revenue records. Aggrieved with



C.R.P. Nos. 1293 and 1755 of 2023

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the report, the petitioner filed I.A. Nos.867 and 868 of 2014, seeking to strike off the Advocate-Commissioner's report and to appoint a fresh Advocate-Commissioner to properly measure and locate the property using both old and new records. The petitioner provided sale deeds and encumbrance certificates proving ownership of Plot No.23 in Survey No. 21/3B3, which was originally settled by Thirunavukkarasu in 1984 and later sold to the petitioner in 2005. The petitioner alleges that the Advocate-Commissioner failed to verify old revenue records due to his relationship with the Village Administrative Officer and other revenue officials, who are allegedly colluding with the respondent to unlawfully claim the property. The petitioner argues that the Advocate-Commissioner's report is vague, incomplete, and has failed to serve its purpose. Hence, the petitioner seeks to have the report struck off, as it was not executed as per the order of the Trial Court and requests a fair resolution. To that effect, they filed applications in I.A. Nos.867 and 868 of 2014 before the Trial Court. The Trial Court failed to consider the real dispute between the parties and erroneously dismissed the petitions. Therefore the order passed by the Trial Court is liable to be set aside.

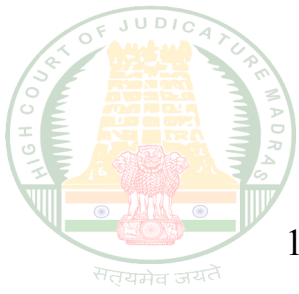
8. Despite name printed, the respondent did not choose to appear and contest the case before the Court.



C.R.P. Nos. 1293 and 1755 of 2023

WEB COPY 9. This Court has perused the plaint and all other materials available on record.

10. Upon perusal, it is observed that I.A. No. 395 of 2012 was filed by the petitioner/plaintiff seeking inspection of the suit property. The application was allowed, and an Advocate-Commissioner was appointed. A report was filed on 21.03.2014, stating that Survey No. 21/3B3, as mentioned in the petition, does not exist. It is further stated that Survey Nos. 133/3 and 133/1 were allegedly converted into Survey No.21/3B3. The original owner, Thirunavukkarasu Pillai, owned certain lands in Survey Nos.133/3, 133/1, 131/5, 131/2, and 132/6, from whom both the plaintiff and the defendant claim title. In light of the facts and circumstances of the case, this Court is of the considered view that the Advocate-Commissioner, upon obtaining an order from the Court, must make a concerted effort to identify the suit property. The mere non-production of all relevant revenue records by the officials does not justify the Advocate-Commissioner's inability to locate the property. Therefore, this Court is inclined to allow these Civil Revision Petitions by striking off the earlier Advocate-Commissioner's report.



C.R.P. Nos. 1293 and 1755 of 2023

11. In the light of the above discussion, these civil revision petitions are

allowed on the following terms:-

(i) The Advocate-Commissioner's report in I.A.No.395 of 2012 in O.S.No.89 of 2012 is struck off.

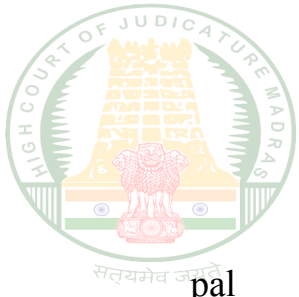
(ii) The learned Principal District Munsif, Villupuram is hereby directed to appoint a new Advocate-Commissioner to inspect the suit property within 10 days from the date of receipt of a copy of this order.

(iii) The Advocate-Commissioner, to be appointed by the Trial Court, shall make all necessary efforts to identify the suit property with the assistance of a surveyor. The surveyor shall produce all relevant revenue records pertaining to the suit property. The Advocate-Commissioner shall submit the report and plan within three months from the date of appointment.

12. In the result, these Civil Revision Petitions are allowed by setting aside the order dated 27.10.2022 passed in I.A. Nos.867 and 868 of 2012 in O.S. No.89 of 2012 on the file of the learned Principal District Munsif, Villupuram. No costs. Consequently, the connected miscellaneous petitions are closed.

(RSVJ)
19.03.2025

Index : Yes / No
Speaking order : Yes / No
NCC : Yes / No



C.R.P. Nos. 1293 and 1755 of 2023

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To

The Principal District Munsif Court,
Villupuram.



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C.R.P. Nos. 1293 and 1755 of 2023

R.SAKTHIVEL, J.,

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C.R.P. Nos. 1293 and 1755 of 2023

19.03.2025