



WEB COPY



CRP. PD. Nos.1327 & 1690 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:09.07.2025

Pronounced on:28.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. Nos.1327 & 1690 of 2023
and CMP. No.8895 of 2023**

S.Logu

Petitioner in both CRPs

Vs

Amaldoss

Respondent in both CRPs

COMMON PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to aside the fair and decretal order in I.A. No.352 of 2022 & I.A. No.993 of 2019 in O.S. No.118 of 2014 on the file of the Additional District Munsif Court, Vellore dated 27.10.2022 & 20.10.2021 as incompetent, illegal and unjust.

For Petitioner : Mr.V.Raghavachari,
Senior Counsel for
Mrs.V.Srimathi (in both)

For Respondent : Mr.R.T.Sundari,
for Mr.M.P.Jayaprakash
in CRP. No.1327 of 2023
Mr.R.Rajarajan
in CRP. No.1690 of 2023

COMMON ORDER



CRP. PD. Nos.1327 & 1690 of 2023

The C.R.P. No.1327 of 2023, has been filed by the plaintiff in O.S.No. 118 of 2014, aggrieved by the dismissal of I.A.No. 352 of 2022, seeking amendment of the plaint. The other revision in C.R.P. No.1690 of 2023 has been filed by the plaintiff, challenging the dismissal of the Application seeking appointment of an Advocate Commissioner.

2. I have heard Mr.V.Raghavachari, learned Senior Counsel for Mrs.V.Srimathi in both the revisions and Mr.R.T.Sundari, learned counsel for Mr.M.P.Jayaprakash, learned counsel for the respondent in C.R.P. No.1327 of 2023 and Mr.R.Rajarajan, learned counsel for the respondent in C.R.P. No.1690 of 2023.

3. The learned Senior Counsel, Mr.V.Raghavachari, contends that the parties are admittedly neighbours and the issue in the suit was pertaining to identity of property and in view of the denial of the right of the plaintiff in the written statement, the defendant has taken out the application to amend the plaint, to include a relief for declaration of title. He would state that the Trial Court has erroneously held that since the defendant has admitted the title of the plaintiff, there was no necessity to amend the plaint.



WEB COPY

4. He would contend that the issue was with regard to the extent and boundaries and points out to the written statement, where there is a clear denial of the same. Even before trial commenced, the plaintiff has taken out the application seeking to incorporate the declaratory relief. He would therefore state that the Trial Court ought not to have dismissed the aforesaid Application seeking amendment.

5. With regard to the other revision, dismissing the Application for appointment of Advocate Commissioner, he would refer to the impugned order and contend that the Trial Court has erroneously dismissed the Application on the ground that the suit is only for permanent injunction and therefore, there is no necessity for requiring a report from an Advocate Commissioner, after conducting local inspection and that the issues can be decided on oral and documentary documentary evidence adduced by the parties. The Trial Court has also found that the petitioner has attempted to collect evidence regarding factum of possession.

6. Per contra, the learned counsel for the respondents Mr.Rajarajan and Mrs.R.T.Sundari, referring to another suit in O.S.No. 232 of 2014



CRP. PD. Nos.1327 & 1690 of 2023

which was filed by the respondent, would contend that in the said suit, the respondent had sought for a declaration that the respondent is the owner of the suit property and that the Petitioner herein had encroached into the suit property and therefore, the relief of mandatory injunction was also been sought for.

7. According to the learned counsel for the respondent, the said suit came to be tried independently and the judgment was also delivered in favour of the respondent on 29.08.2024, as against which admittedly, the revision petitioner has preferred an Appeal and the same is pending before the 1st Appellate Court .

8. The learned counsel for the respondents would also invite my attention to the report of the Advocate Commissioner which has been filed in O.S.No.232 of 2014. Referring to the said report, the learned counsel for the respondent would state that the Advocate Commissioner's report as well as Commissioner's plan were taken into account by the Trial Court and after elaborate trial and fair opportunity being given to the revision petitioner, the Trial Court has found that the revision petitioner has fully encroached into the property of the respondent and



therefore, when the earlier report is already available, there is no necessity for requiring another Commissioner to be appointed in a different suit.

9. I have carefully considered the submissions advanced by the learned counsel on either side and also perused the materials available on record.

10. In fact, I find that the revision petitioner herein had taken out an Application in I.A.No.1 of 2024 in O.S.No. 232 of 2014 that is the suit filed by the respondent herein seeking for appointing a second Advocate Commissioner to measure the properties with the help of Town Surveyor. The said application came to be dismissed by the Trial Court and challenging the same, a revision was filed by the revision petitioner in C.R.P.No.3307 of 2024. This Court finding that the Advocate Commissioner was also examined as P.W.2 and was cross examined by the revision petitioner herein and that even the Town Surveyor was examined, there was no necessity to appoint a second Advocate Commissioner, to inspect the very same properties. The Court also took note of the fact that the Advocate Commissioner's report was objected to



by the revision petitioner at the earliest point of time and only in such circumstances, the cross examination of the Advocate Commissioner was also permitted and even the Inspector of Survey was permitted to be examined and there is no infirmity in the order of the Trial Court, dismissing the Application, to appoint a second Advocate Commissioner as it would amount to indirectly scrapping or nullifying the earlier report already on record.

11. Now the very same request is made in the present suit filed by the revision Petitioner. There is no dispute with regard to the property in dispute in both the suits. Therefore, the property that is sought to be inspected by the Advocate Commissioner is Plot No.21B which belongs to the revision petitioner. Admittedly, Plot No.21A belongs to the respondent and is situated on the western side of the revision petitioner's property.

12. In the report filed by the learned Advocate Commissioner, the learned Advocate Commissioner has proceeded to inspect Plot No.21A which belongs to the respondent herein. Admittedly Plot No.21B has not been inspected and no report was filed in the other suit. In the present suit, the relief sought for, no doubt originally, is only for a permanent



injunction to restrain the respondent herein from interfering with the petitioner's peaceful possession and enjoyment.

WEB COPY

13. The core issue is with regard to the identity and extent of the properties and whether there has been any encroachment made by the petitioner as claimed in O.S. No.232 of 2014 or whether the encroachment is by the respondent as claimed in the present suit in O.S.No.118 of 2014. Unfortunately, despite a direction for joint trial of both the suits, it appears that the suit in O.S.No.232 of 2014 has been tried independently for reasons not known and has also been decreed as against which the First Appeal has been filed and the same is pending.

14. As seen from the Advocate Commissioner's report, the property that has been the subject matter of the Plot No.21A belonging to the respondent herein and Plot No.21B belonging to the revision petitioner with four specific boundaries has not been part of the inspection carried out by the learned Advocate Commissioner, in the earlier suit.

15. Coming to the revision against the amendment sought for, the Trial Court without noticing that there was a specific denial of the

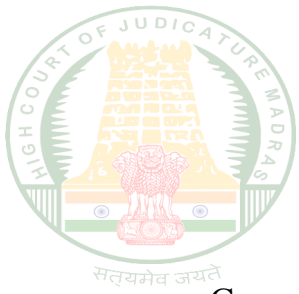


CRP. PD. Nos.1327 & 1690 of 2023

plaintiff's entitlement to the extent and boundaries as mentioned, necessitated the plaintiff to seek relief of declaration. However, going by the admission of the defendant that the defendant does not dispute the plaintiff's ownership of Plot No.21B, the Trial Court has found no necessity to permit amendment.

16. In the written statement, the defendant has specifically admitted only the plaintiff's plot to be in Plot No.21B and they have denied the measurements and also extent. In light of such denial, the plaintiff has diligently chosen to seek amendment by incorporating relief of declaration. In fact, the respondent herein in O.S.No.232 of 2014 had initially filed the suit only for bare injunction, however, pending suit, the relief of declaration was also included, by way of amendment. The revision petitioner herein ought to have been given a fair opportunity to seek proper relief by introducing relief of declaration.

17. In light of the above, I am inclined to set aside the findings in the amendment application filed in I.A.No.352 of 2022 in O.S. No.118 of 2014.



WEB COPY

18. Insofar as the revision as against the dismissal of the Advocate Commissioner Application, in view of the fact that the Trial Court has proceeded to dismiss the Application only on the ground that it is a suit for bare injunction and there being absolutely no reference with regard to the earlier Advocate Commissioner's report in the suit in O.S.No.232 of 2014 and the earlier report also being only with regard to the suit property in the said suit viz., Plot No.21B and the specific case of the revision petitioner that though in the affidavit in support of the amendment Application in I.A.No. 352 of 2022, it is stated that the Commissioner and Surveyor had already visited the property and inspected the same, the Advocate Commissioner has not carried out proper inspection despite a detailed instructions and memo given to the Advocate Commissioner. It is admitted that the suit property has been inspected in the earlier suit.

19. I have already referred to the unsuccessful attempts made by the revision petitioner to have a second Advocate Commissioner appointed in the earlier suit proceedings. It is clear from the Advocate Commissioner's plan and report that the revision petitioner's property has also been inspected in the earlier suit and the revision petitioner has also elaborately cross examined not only the Commissioner, but also, the



Surveyor.

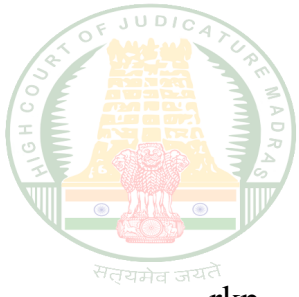
WEB COPY

CRP. PD. Nos.1327 & 1690 of 2023



20. In the light of the above, I do not deem it necessary to appoint an Advocate Commissioner over and again for the very same purpose. The report of the Commissioner in the earlier suit has already been considered by the Trial Court while decreeing O.S.No.232 of 2014 and the same is subject matter of Appeal. In the light of the above, it would only lead to further confusion and multiplicity of proceedings, if a Commissioner is appointed in the present suit. Though the trial court has not dismissed the Application on the ground that the earlier Commissioner's report is already available, yet the ultimate decision to refuse appointment of an Advocate Commissioner does not require interference in revision.

21. Accordingly, CRP. No.1327 of 2023 is allowed and C.R.P. No.1690 of 2023 is hereby dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.



CRP. PD. Nos.1327 & 1690 of 2023

28.07.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Additional District Munsif Court, Vellore

P.B.BALAJI, J.,

rkp

Pre-delivery order in
CRP. PD. Nos.1327 & 1690 of 2023
and CMP. No.8895 of 2023



WEB COPY



CRP. PD. Nos.1327 & 1690 of 2023

28.07.2025