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Civil Revision Petition No.1456 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :09.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.PD.No.1456 of 2025
and C.M.P.No.8588 of 2025

S.K.Jagadesan @ S.K.Jagadeeswaran
Vs

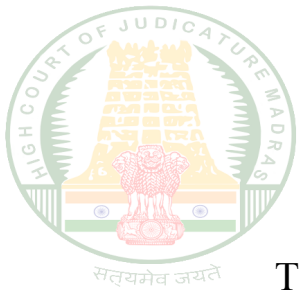
... Petitioner

1. Saravanan
2. A.Nanjappan
3. K.Kandasamy
4. The Executive Officer,
Ariyappampalayam Town Panchayat,
Sathyamangalam,
Erode District

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to be pleased to set aside the fair and decretal order dated 03.03.2025 made in I.A.No.8 of 2024 in O.S.No.120 of 2019 on the file of the learned District Munsif Court, Sathyamangalam.

For Petitioner	: Mr.N.Manoharan
For Respondent-4	: Mr.D.Gopal, Government Advocate



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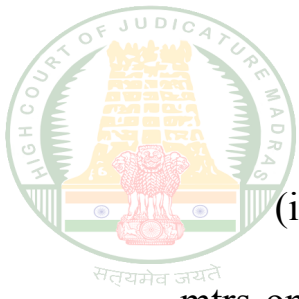
ORDER

The plaintiff, aggrieved by the dismissal of his application seeking appointment of an Advocate Commissioner, has preferred the above C.R.P.

2. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the trial Court.

The plaintiff had filed the suit O.S.No.120 of 2019 on the file of the District Munsif Court, Sathyamangalam seeking declaration of his title to the suit property and consequently for permanent injunction.

(i) It is the plaintiff's case that he is in enjoyment and possession of the suit property under a Gift Settlement Dated 29.12.2000 along with his wife, mother, sister and daughter. The 1st defendant is an adjacent owner who owns a property to the East of the suit property. The 2nd defendant is residing to the north of the plaintiff's house and the 3rd defendant is residing on the western side of the plaintiff's house. The 4th defendant owns the panchayat road which is on the south of the plaintiff's terrace house and vacant area. Though there are no reliefs claimed against the defendants 2 to 4, they have been added as proper parties in the suit.



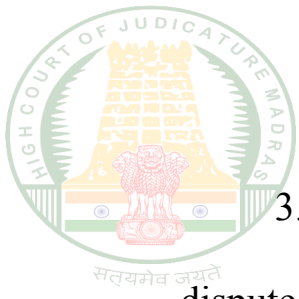
(ii). The plaintiff would contend that the suit property measures 10.8 mtrs on the Northern side, 10 mtrs on the Southern side, 16.2 mtrs on the western side and 16 mtrs on the eastern side. The entire extent is in the exclusive possession and enjoyment of the plaintiff. The defendants have no right, title or interest in the said property.

(iii) To secure the suit property, when the plaintiff was preparing to construct a compound wall on the eastern side of the property, the defendants with the intent to grab the property, had started causing disturbances. The plaintiff would submit that the property is enclosed by compound walls on all the other 3 sides and it is only on the eastern side that there is no wall. The 1st defendant's house is to the east of the plaintiff's house. Between the plaintiff and the 1st defendant's house, there is a South-North lane. The plaintiff would submit that this extent can be measured by seeking the assistance of an Advocate Commissioner. The plaintiff had informed the police authorities about the illegal activities of the defendants in preventing the plaintiff from putting up the wall. The plaintiff had also remitted necessary fees to the revenue authorities on 18.10.2010 to survey the suit properties. The Surveyor has visited and measured the properties after



giving notice to the defendants and others. The plaintiff was also provided with a map along with measurements. The suit property is a vacant land which runs in a South-North direction to the east of the plaintiff's house. There is a vacant area in front of the plaintiff's tiled house as well as in front of his terrace house. The disputed vacant lane runs adjacent to the property of the 1st defendant's house on the western side.

(iv) The plaintiff's contention that the 1st defendant had put up a house by occupying the lane to an extent of 2 ½ feet in width and 53 feet in length and is now claiming that the existing 3 ½ width by 53 feet length is common for whitewashing a wall. The plaintiff by way of an amendment has made it clear that he is not taking any claim that the common well that has been encroached by the 1st defendant to the width of 2 ½ feet and the length of 53 feet. The plaintiff would submit that he had initially filed the suit only for an injunction. However, the trial Court in I.A.No.4 of 2019 (amendment petition), had observed that even if the relief is granted, the plaintiff cannot get a proper relief as there is no prayer for declaration and mandatory injunction. Therefore, the plaintiff had subsequently included the relief of declaration.



3. After filing of the written statement wherein the defendants had disputed the right of the plaintiff, the plaintiff has filed an application seeking the appointment of an Advocate Commisisoner to measure the suit properties with the assistance of the survey authorities and to note down the physical features and measurements.

4. In the affidavit filed in support of the application, the plaintiff has simply stated that the 1st defendant has not registered the sale deed as per the measurements in the patta, but has obtained a sale deed at his convenience. Therefore, there is a necessity to appoint an Advocate Commissioner.

5. The application was resisted by the 1st defendant by contending that the plaintiff has not chosen to file a rough plan along with the plaint to show the property in question. He would submit that the plaintiff is attempting to encroach the 3 ½ feet width lane and for this purpose, he has been filing several applications. Further, the plaintiff's antecedent title deeds clearly describe the property on the east as Subbanna Gounder 's house compound wall and the lane for white washing the compound wall.

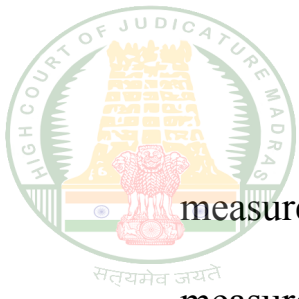


Therefore, he would submit that the Advocate Commissioner is sought only for the purpose of collecting the evidence, which cannot be permitted.

6. The learned District Munsif, Sathyamangalam by his order dated 03.03.2025, dismissed the said application on the ground that the plaintiff has not described the property as conveyed in his earlier documents or the documents of his predecessor-in-title with measurements and has not come to court with clean hands.

7. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the 4th respondent.

8. Even according to the plaintiff, the property has been measured by the Surveyor at his behest and a field map was also given to him. In the application for appointment of an Advocate Commissioner, the plaintiff has not made out any reason for seeking appointment of an Advocate Commissioner, except for stating that the 1st defendant had not registered the Sale Deed as per the measurements in the patta, but has provided



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measurements at his convenience and therefore, there is necessity to measure the suit property.

9. A reading of the affidavit filed in support of the application clearly sets out that the intent of the plaintiff is only to gather evidence through the commissioner's report. Having based his claim on title deeds and also on the survey that has been earlier conducted, the present application for appointment of Advocate Commisisoner is absolutely redundant. The learned District Munsif, Sathyamangalam has rightly rejected the application and I see no reason to interfere with the same. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.04.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,

The District Munsif Court, Sathyamangalam.



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P.T.ASHA, J.,

srn

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