



CRP.No.1589 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2025

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.1589 of 2025

and

C.M.P.No.9219 of 2025

Thulasimaniammal (Died)

- 1.S.Vijayakumar
- 2.S.Vijayalakshmi
- 3.S.Mohan Kumar
- 4.S.Udhayakumar
- 5.S.Sundarakurthy
- 6.S.Saraswathi

S.Paranthaman (Died)

- 7.Uma Maheshwari
- 8.Ishwarya
- 9.Karthikeyan

...Petitioners

Vs.

- 1.Suresh Chetty
- 2.Kavitha
- 3.Balamurugan

...Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order passed in IA.No.6 of 2025 in OS.No.224 of 2003 on the file of the District Munsif Court, Ambattur dated 13.02.2025.

For Petitioner : M/s.R.Santhanam

ORDER

Challenging the order passed by the District Munsif, Ambattur the plaintiffs are petitioners before this Court.

2. The petitioners/plaintiffs had filed a suit OS No.224 of 2003 on the file of District Munsif, Ambattur for declaring that they are the absolute owners of the suit schedule property and to direct the respondent/defendant to deliver vacant possession of the B Schedule property and for an injunction, restraining the respondent/defendant, his men, agents or servants from in any manner disturbing their possession of the C-schedule property. The A schedule property measures 51 cents in Survey No.388, Thirumullavoyal Village Ambattur which has been shown as A B C D in the



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rough sketch. B Schedule property is a part of the A Schedule property which has been shown as M N O P in the rough sketch. The C schedule property is described as A B S M P O C D in the rough sketch.

3. The petitioners/plaintiffs' submission is that the 1st plaintiff is the absolute owner of the A schedule property having purchased the same under a registered sale deed dated 27.12.1966. It is their contention that the defendant had trespassed into the portion described as the B Schedule property and was also attempting to trespass into the property described as the C schedule property. Therefore, the petitioners/plaintiffs have come forward with the aforesaid suit.

4. A written statement has been filed by the 1st respondent/1st defendant inter alia contending that the petitioners/plaintiffs have twisted the facts. He would submit that a vacant house site in plot no.5, measuring 1961 sq.ft. comprised in survey no.388 was purchased by one Murugan from Kanagambal and others through their power agent R.Dhanapal, under a



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registered sale deed dated 15.09.1994. From the said Murugan, the 1st defendant along with his wife and son have purchased the aforementioned property. He is in possession and enjoyment of the same and has also got the revenue records mutated in his name. It is the petitioners/plaintiffs who had attempted to trespass into the property in the 1st week of May 2003 and this was prevented by the 1st defendant and his family members. The 1st defendant would submit that he is the owner of the B schedule property.

5. Pending the suit, the petitioners/plaintiffs had taken out an application in IA No.2032 of 2016 to amend the plaint to include the measurements of the property described as M N O P in the rough sketch. This application was dismissed by order dated 03.01.2017. The learned Trial Judge had observed that the petitioners/plaintiffs who have come forward for a declaration, recovery of the possession and injunction have a bounden duty to provide the exact extent of the property in respect of which the relief is sought for. The petitioners/ plaintiffs who had failed to do so have come forward with an amendment 14 years after the filing of the suit which is



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nothing but an abuse of the process of Court.

6. This order was challenged by the petitioners/plaintiffs in CRP No.2292 of 2019. The said revision was disposed of on 02.12.2021 giving liberty to the petitioners/plaintiffs to file an application for the appointment of an Advocate Commissioner to inspect the suit property with the help of a Taluk Surveyor. Thereafter, the petitioners/plaintiffs have come forward to file IA.No.1 of 2022 to appoint an Advocate Commissioner which was allowed. An Advocate Commissioner had thereafter visited the suit schedule property and submitted his report on 28.11.2024.

7. The respondents/defendants have also submitted objections to the Commissioner's report. In the objections, the respondents/defendants had highlighted the fact that though 3 properties were mentioned in the schedule only one has been highlighted by the Advocate Commissioner and earmarked it as being in occupation of the respondents/defendants. This runs contrary to the warrant as the warrant had not given any authority to the



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Advocate Commissioner to verify possession. The respondents/defendants had further objected that the Advocate Commissioner's Report is filed with reference to the buildings put up on the suit property. That apart, they have also contended that the Commissioner's Report does not coincide with the Surveyor's plan.

8. Thereafter, the petitioners/plaintiffs had filed IA.No.6 of 2025 which is the subject matter of this revision petition seeking to amend the schedule of the plaint. The petitioners/plaintiffs would state that the Advocate Commissioner along with the Taluk Surveyor has filed a report revealing the measurements of the property of the defendants and the plaintiffs and therefore there is a necessity to amend the plaint. After the wording M N O P in the rough sketch, the petitioners/plaintiffs sought to include the following:-

"measuring east to west 64 feet north to South to 33 feet" and add in that place "ad measuring East to west on the northern side 18.3 meter(60 feet) East to west on the



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Southern side 18.3 meter(60 feet) and North to south on the Eastern by 33 feet 1 inches and North to South on the western side 33 feet 1 inches and in total 1900 square feet in total 1900 square feet"

9. The respondents/defendants had filed a counter contending that earlier the petitioners/plaintiffs had taken out a similar application in IA.No.2032 of 2016 to amend the plaint in the year 2016 and the same was dismissed by an order dated 03.01.2017 and in the revision filed against that order in CRP.No.2292 of 2017 this Court has only granted a liberty to the petitioners/plaintiffs to file an application for the appointment of an Advocate Commissioner. The warrant which had been issued to the Commissioner in IA.No.1 of 2022 was only to measure the suit property as per the revenue records. However, the Taluk Surveyor has not referred to the revenue documents and has simply measured the property which is in the possession of the respondents/defendants and filed a report. The petitioners/plaintiffs have now filed the amendment petition which



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introduces a new case. Therefore, considering the dismissal of the earlier amendment petition and the fact that the new property is sought to be introduced thereby a new case pleaded, the respondents/defendants sought to have a dismissal of the said application.

10. The learned District Munsif, Ambattur after considering the arguments and perusing the records was pleased to dismiss I.A.No.6 of 2025. Aggrieved by the same, the petitioners are before this Court.

11. Heard the learned counsel for the petitioners and perused the records.

12. The petitioners had earlier filed IA.No.2032 of 2016 seeking the very same amendment covering a larger extent which is evident from the particulars of the amendment extracted hereinbelow:-

*" To add in the plaint B schedule of property column
before the word shown as MNOP in the rough Sketch ad*



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measuring East to west on the northern side 62 feet 6 inches,

East to west on the Southern side 63 feet 6 inches, North to

south on the East by 32 feet 6 inches and North to South on the

west side 32 feet and in total 2016 square feet"

13. In the present petition (I.A.No.6 of 2025) the amendment is for a lesser extent of 1900 sq.f.t. IA.No.2032 of 2016 was dismissed by the District Munsif, Ambattur on the ground that the petitioners/plaintiffs who have filed the suit for declaration and recovery of possession were not even aware about the exact extent of the property in respect of which relief was sought for and after a lapse of 14 years the amendment petition has been filed. This order has not been set aside by this Court in CRP.No.2292 of 2017 on the contrary this Court only gives the petitioners/plaintiffs the liberty to file a fresh application for appointment of an Advocate Commissioner and no liberty was granted for taking out another amendment application.



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14. The present application has been filed on the ground that the Advocate Commissioner's Report would indicate the extent of the encroachment and the said application has been filed nearly 19 years after the suit has been filed. The petitioners as the plaintiffs have sought for a recovery of possession. Such being the case the plaintiffs have to know the exact extent of the encroachment. Neither in the pleadings nor in the schedule has the measurement been given with reference to schedule A, B and C properties. In fact, the petitioners/ plaintiffs have come forward with a specific case that the encroached area is that area which has been described as M N O P in the rough sketch. In para no. 4 of the plaint the, petitioners/plaintiffs have stated as follows:-

"In the usual way when the plaintiff inspected the property in the month of May, 2003, the plaintiff found that the defendant has trespassed into a portion of the A schedule property and has put up as asbestos sheet superstructure. The area encroached by the defendant is more fully described in the B schedule hereunder."



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15. Therefore, the petitioners/plaintiffs had clearly described the encroachment as the one shown as M N O P in the rough sketch attached to the plaint. Now, the petitioners/plaintiffs seek to add a measurement which measurement is different from the measurement given in the earlier amendment application, namely, IA.No.2032 of 2016. Therefore, the plaintiffs have not come forward with a definite case and the Trial Court has rightly rejected the application. I see no reason to interfere with the same.

16. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.04.2025

shr

Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

To

The District Munsif Court, Ambattur.

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P.T.ASHA, J.,

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