



CRP Nos.1806 & 1813 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NOS.1806 AND 1813 OF 2022

AND

CMP NO.9233 OF 2022 IN CRP NO.1813 OF 2022

CRP NO.1806 OF 2022

- 1.Pandurangan (Died)
S/o.Govindasamy Naikar
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.
- 2.Sudhandiradevi
W/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.
- 3.Geetha
D/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.
- 4.Latha
D/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.



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5.Jayasudha

D/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.

6.Kavitha

D/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.

7.Muthukumaran

S/o. Pandurangan
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.

... Petitioners /
Petitioners /
Plaintiffs

Versus

1.Narayanan

S/o.Saminathan Muthaliyar
Periyambattu, Kallakurichi,
Villupuram District.

2.Ganeshan

S/o.Saminathan Muthaliyar
Periyambattu, Kallakurichi,
Villupuram District.

3.The District Collector

Villupuram District.

4.Revenue Divisional Officer

Kallakurichi Taluk,
Villupuram District.



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5.Revenue Thahsildar
Kallakurichi Taluk,
Villupuram District.

6.Head Surveyor
Kallakurichi Taluk,
Villupuram District.

7.Village Administrative Officer
Periyambattu,
Kallakurichi Taluk,
Villupuram District.

... Respondents /
Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the Fair and Decretal Order made in I.A.No.852 of 2019 in O.S.No.97 of 2010 dated December 1, 2020, on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioners : Mr.M.Mohamed Azharudeen
for M/s.A.Nowfal

For Respondents 1&2: Ms.R.Divya Preathika

For Respondents 3-7: Mr.R.Vigneshwaran
Government Advocate

CRP NO.1813 OF 2022

1.Pandurangan (Died)
S/o.Govindasamy Naikar
Peelamedu Village,
Sangarapuram Taluk,
Villupuram District.



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2.Sudhandiradevi
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3.Geetha
D/o. Pandurangan
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Periyamambattu, Kallakurichi,
Villupuram District.
- 3.The District Collector
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- 6.Head Surveyor
Kallakurichi Taluk, Villupuram District.
- 7.Village Administrative Officer
Periyamambattu,
Kallakurichi Taluk,
Villupuram District.

... Respondents /
Respondents /
Defendants

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, 1908, praying to set aside the Fair and Decretal Order made in I.A.No.853 of 2019 in O.S.No.97 of 2010 dated December 1, 2020, on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioners : Mr.M.Mohamed Azharudeen



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for M/s.A.Nowfal

For Respondents 1&2: Ms.R.Divya Preathika

For Respondents 3-7: Mr.R.Vigneshwaran
Government Advocate

COMMON ORDER

Feeling aggrieved by the dismissal Orders dated December 1, 2020 passed by the 'Principal District Munsif Court, Kallakurichi' ['Trial Court' for short] in the Interlocutory Application filed under Order XXVI Rule 9 of the 'Code of Civil Procedure, 1908' ['CPC' for short] in I.A.No.852 of 2019 in O.S.No.97 of 2010 seeking to appoint an Advocate-Commissioner to inspect and measure the Suit Property with the help of a Surveyor and in the Interlocutory Application filed under Section 151 of CPC in I.A.No.853 of 2019 in O.S.No.97 of 2010, seeking to reopen the plaintiffs' side evidence, the Petitioners therein have preferred this Civil Revision Petition under Section 115 of C.P.C. For the sake of convenience, hereinafter the parties will be referred to as per their array in the Original Suit.

2.First Revision Petitioner-Mr.Pandurangan is the husband of the second-Revision Petitioner. Revision Petitioner Nos.3 to 7 are his children. Pandurangan filed an Original Suit in O.S.No.97 of 2010 seeking



mandatory injunction against the first and second defendants directing to

remove the construction put up by them by encroaching the pathway and

also seeking direction against defendants 3 to 7 to make necessary

correction in the village revenue records by way of mandatory injunction.

Trial commenced in the year 2017 and the plaintiffs' side evidence was

closed with P.W.3 as early as on November 11, 2017. The second

defendant was examined as D.W.1 and the defendants' side evidence was

closed on June 28, 2018. Thereafter, the case was posted for arguments on

July 6, 2018 and on subsequent dates. When the case was posted for final

arguments on October 08, 2018, it was reported that the original plaintiff

viz., Pandurangan passed away leaving behind his wife, four daughters and

one son (Revision Petitioner Nos.2 to 7 herein). Subsequently, they were

brought on record in the Suit. Thereafter, the Plaintiffs / Revision

Petitioners filed Interlocutory Applications to reopen the plaintiffs' side

evidence and to appoint an Advocate-Commissioner under Order XXVI

Rule 9 of CPC to inspect the Suit Property with the help of a Surveyor.

2.1.The Trial Court, after hearing both sides, dismissed both the Interlocutory Applications by reasoning out that the Interlocutory Application under Order XVI Rule 9 of CPC was filed belatedly and at the



stage of argument and that the plaintiffs can establish their case through revenue records and other evidence and that the appointment of an Advocate-Commissioner is not necessary in view of the facts and circumstances of the case. Accordingly, the Trial Court dismissed both the Interlocutory Applications. Feeling aggrieved by the dismissal Order, the Revision Petitioners preferred this Civil Revision Petition.

3.Mr.Mohamed Azharudeen, learned Counsel appearing for the Revision Petitioners in both the Civil Revision Petitions submits that the first item of Suit Property is a North-South Street and the second item of the Suit Property is the house property of the plaintiffs. The first and second defendants' property is situated on the eastern side of the first item Suit Property. The first and second defendants encroached the first item Suit Property and erected buildings. Hence, the plaintiffs filed a Suit for mandatory injunction to remove those encroachment. Further, the defendants 1 and 2 colluded with the Revenue Officials, namely defendants 3 to 7 and tried to make false entries in the revenue records. Hence, the plaintiffs filed a Suit for mandatory injunction to delete the entries made in the revenue records. Considering the nature of the Suit, the plaintiffs seek that appointment of an Advocate-Commissioner is



necessary to prove the nature of the Suit Property, the existence of pathway as well as the exact encroachment made by the defendants. Since the original plaintiff, namely Pandurangan passed away on October 2, 2018, there was a delay in filing the Interlocutory Application under Order XXVI Rule 9 of CPC seeking appointment of Advocate-Commissioner. Hence, in the interest of justice, appointment of Advocate-Commissioner is very much essential to prove the plaintiffs' case and for that re-opening the Plaintiff side evidence is essential. However, the Trial Court, did not consider the entire facts and wrongly dismissed both the Interlocutory Applications. Accordingly, he prays to allow both the Civil Revision Petitions and set aside the dismissal Order passed by the Trial Court in the Interlocutory Applications and to allow the Interlocutory Applications in I.A.Nos.852 and 853 of 2019.

4.Per contra, Ms.R.Divya Preathika, learned Counsel appearing for the respondents 1 and 2 submits that the Suit was filed on February, 2010. The defendants 1 and 2 filed their written statement as early as on June 28, 2010. Both sides evidence was closed and the Original Suit was posted for argument as early as on July 6, 2018. For the past seven years, the Suit is pending at the argument stage, without any



progress. She further submits that the plaintiffs can establish their case by producing oral as well as documentary evidence. Appointment of Advocate-Commissioner is no way helpful to establish their case and that too, after fifteen years from the date of institution of the Suit. The Trial Court is right in dismissing the Interlocutory Applications and there is no warrant to interfere in it. Accordingly, she prays to dismiss both the Civil Revision Petitions.

5.Mr.R.Vigneshwaran, learned Counsel appearing for the respondents 3 to 7 submits that it is an *interse* dispute between the plaintiffs and the defendants 1 and 2, in which the Official Respondents are not related. Further, Official Respondents are bound and ready to obey the Decree to be passed in the Suit. Accordingly, he prays to dismiss both the Civil Revision Petitions.

6.This Court has considered both sides' submissions and also perused the Orders under challenge in these Civil Revision Petitions along with other materials on record.

7.As already stated *supra*, the Suit is one for mandatory



injunction against the defendants. The Suit was filed on February 2010 and the defendants 1 and 2 filed their written statement in the month of June 2010. Trial commenced in November 2017 and plaintiffs' side evidence was closed with P.W.3 on November 11, 2017. The second defendant was examined as D.W.1 and the defendants' side evidence was closed with D.W.1 on June 28, 2018. The case was posted for arguments on July 6, 2018, both parties did not argue the case. When the case was finally posted for arguments, it was submitted that the original plaintiff passed away on October 2, 2018. Thereafter, his legal heirs were added as plaintiff Nos.2 to 7 and they have filed these Civil Revision Petitions after suffering the dismissal Orders passed in their Interlocutory Applications.

8.Considering the facts and circumstances and nature of the Suit, this Court is of the view that appointment of Advocate-Commissioner would no way be helpful to the plaintiffs, that too after fifteen years from the date of institution of the Suit. The Trial Court, after considering the entire facts and circumstances, rightly dismissed both the Interlocutory Applications. This Court does not find any irregularity or illegality in the Orders passed by the Trial Court and this Court finds no merit in these Civil Revision Petitions. Hence, these Civil Revision Petitions must fail.

9.In the result, both the Civil Revision Petitions are dismissed.



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Considering the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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- 3.Revenue Divisional Officer,
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R.SAKTHIVEL, J.

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