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C.R.P.No.2620 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No.2620 of 2024
and CMP.No.13766 of 2024

Christ Matriculation School

... Petitioner / 1st Defendant

Vs.

1.S.Kanchana

2.P.Dilli Kumar

... Respondents / Plaintiff,

2nd Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to call for the records pertaining to the fair and decretal order dated 23.01.2024 passed by the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee in I.A.No.1 of 2020 in O.S.No.173 of 2020 and set aside the same.

For Petitioner : Ms.R.Maheshwari

For Respondents : Ms.C.Harini for R1
Mr.V.R.Appaswamee for R2

ORDER

Challenging the order passed by the II Additional District and Sessions Judge, Tiruvallur at Poonamallee in I.A.No.1 of 2020 in O.S.No.173



of 2020, the first defendant who is the revision petitioner has filed the present civil revision petition.

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2. The impugned interlocutory application has been filed by the plaintiff in O.S.No.173 of 2020, under the provisions of Order XXVI Rule 9 and Section 151 of CPC., praying for appointment of an Advocate Commissioner to inspect the property with the assistance of the Taluk Surveyor, to identify and measure the property, note down the physical features and submit a report.

3. The plaintiff had filed the suit in O.S.No.173 of 2020 before the II Additional District Judge, Poonamallee for a declaration that she is entitled to the suit schedule property and for a consequential injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property. For the ease of understanding, the parties are referred to as per their litigative status before the trial Court.

4. The plaintiff's case is that the suit property in question measures an extent of 0.21 cents in S.No.98/1 at Sennerkuppam Village, Poonamallee



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Taluk, Thiruvallur District, which is bounded on the north by the land belonging to Sakthivel, east by the property in occupation of the first defendant, west by road and south by land belonging to Dharmalinga Chettiar and Battai. The suit property was purchased by the plaintiff from R.Kotteeswari and K.Gajalakshmi, represented by their Power Agent D.Palani Chettiar, who is their brother, under the registered sale deed dated 20.07.2005. The said Kotteswari and Gajalakshmi had acquired title to the property in a family partition that had taken place between them, their sibling Palani Chettiar and their parents Dharmalinga Chettiar and Kuppammal, under the registered deed of partition dated 03.07.1985. The sisters had appointed their brother Palani Chettiar as power agent under two separate Power of Attorneys dated 28.09.1992, and on the strength of these power deeds, the said Palani Chettiar had executed a sale in favour of the plaintiff.

5. The plaintiff / petitioner in I.A.No.1 of 2020 would submit that the first defendant-School was situated to the west of her property and the first defendant had constructed a compound wall surrounding their property and thereby demarcated their property from that of the plaintiff's property. The



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plaintiff would submit that thereafter, she had applied for grant of patta before the Tahsildar, Poonamallee. The surveyor had come to the suit property to measure the same in the third week of July 2012. However, the first defendant had objected to the same and prevented the revenue officials to measure the suit property. Further, on 05.08.2012, they attempted to trespass into the suit property which was successfully prevented by the plaintiff's husband. Since, the first defendant was attempting to trespass into the suit property, the plaintiff had filed a suit in O.S.No.324 of 2014 before the District Munsif Court, Poonamallee, seeking permanent injunction. However, the said suit was dismissed for default.

6. Be that as it may, on 01.09.2020, the first defendant in collusion with the second defendant, who is the son of the predecessor-in-title, have attempted to usurp the property. The plaintiff who is living 25 kms away from the suit property cannot have vigil over the property round the clock. Fearing that the defendants may encroach into the suit property illegally, thereby causing loss and damage to the plaintiff's property, which the plaintiff could not compensate in terms of money, she filed the present suit in O.S.No.173 of 2020 for declaration of title and for a consequential



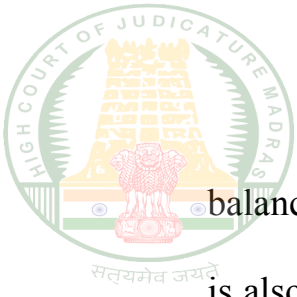
injunction.



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7.1 The first defendant had filed the written statement *inter alia* contending that the total extent of 4 acres belonged to Dharmalinga Chettiyar, Kuppammal, Palani Chettiyar, Kotteswari and Gajalakshmi. They had entered into a family partition in respect of the lands in Survey No.98/1 along with other properties. Under the partition deed bearing Doc.No.3677 of 1985, Dharmalinga Chettiyar, Kuppammal and Palani Chettiyar, together had obtained a right over 1.50 acres in Sy.No.98/1 along with other properties. Kotteswari and Gajalakshmi had obtained 1.25 acres each in the said survey number, who had later executed a Power of Attorney in favour of Palani Chettiyar, in respect of the properties obtained by them under the partition deed. The first defendant would submit that out of the 4 acres in Survey No.98/1, they had purchased an extent of 3 acres and 51 cents under 10 sale deeds. The first defendant had purchased the property between the year 1992 and 1993, and have obtained patta in respect of the same. After the purchase, the first defendant have been in exclusive possession and enjoyment of the property. It is also the contention of the first defendant that five years after the said purchase by the defendant, the



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balance land was sold to different persons under five documents of sale. It is also his contention that the said Palani Chettiyar had sold over and above what remained in the hands of the original owners. The first defendant had contended that the plaintiff was not entitled to an extent of acre 0.21 cents, as the same is not available on ground. To which, the plaintiff would contend that she is prepared to accept what is available on ground.

7.2 The first defendant also filed a suit in O.S.No.596/1999 before the Principal District Munsif, Poonamallee, against the Palani Chettiyar, for permanent injunction. In addition, he also filed O.S.No.121 of 2014 before the Principal District Munsif, Poonamallee, against the Palani Chettiyar and Poovalingam, seeking permanent injunction, when they attempted to occupy the property. The defendant, ultimately contended that the plaintiff has no right to the suit property and therefore, the suit should be dismissed.

8. Pending the suit, the plaintiff has filed I.A.No.1/2020 seeking to appoint an Advocate Commissioner, which according to her, was for the purpose of measuring the suit property, since the first defendant has come forward with a categorical statement that the extent of Acre 0.21 cents was



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not available on ground. Therefore, if an Advocate Commissioner was appointed to measure and note down the physical features of the suit property, it would be very useful for the Court to arrive at a decision. Further, it is pleaded that by appointing an Advocate Commissioner, no prejudice whatsoever is likely to be caused and on the contrary, it would be of interest to the parties before litigation.

9. In the counter to the said I.A., the first respondent/first defendant reiterated the same line of contentions raised by him in the written statement of the suit.

10 Ultimately, the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee, by order dated 23.01.2024, has proceeded to appoint the Advocate Commissioner, and accordingly the said I.A. was allowed.

11. Challenging the said order dated 23.01.2024, the first defendant is before this Court in the present revision.



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12. The learned counsel for the revision petitioner would vehemently oppose the said I.A.No.1/2020, contending that there is no extent of Acre 0.21 cents available on site and therefore, the application is nothing but an attempt on the part of the plaintiff/first respondent to gather evidence. That apart, the revision petitioner's property is enclosed on all sides by a compound wall.

13. The learned counsel appearing for the first respondent / plaintiff would contend that the first defendant/revision petitioner is preventing the survey to be conducted with reference to the property which is situated outside the compound wall of the revision petitioner. That apart, the learned counsel for the plaintiff would submit that in order to appreciate the contention of the first defendant that Acre 0.21 cents of land is not available on site, it would be necessary to seek the assistance of the Advocate Commissioner along with Taluk Surveyor to measure the property as per the documents of title of all the parties.

14. Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the first respondent.



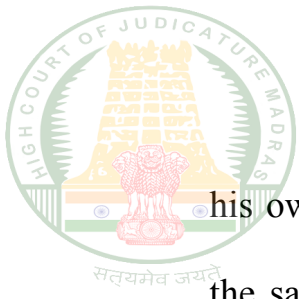
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15. Admittedly, the revision petitioner's property is bounded on all sides by a compound wall which fact has been admitted by the first defendant. That being the case, it is rather strange that the first defendant is opposing to survey the lands lying outside his property. Neither the defendants nor the plaintiff would be prejudiced in any fashion, if the Advocate Commissioner so appointed, would visit and measure the property as per the documents of title of each parties.

16. The revision petitioner / first defendant relied on the judgment of this Court in *T.K.Krishnamurthy Vs Tamil Nadu Water and Drainage Board, Rep. by its Senior Engineer RWS Division*, reported in [2006 (5) CTC 178]. The first defendant in support of his argument would submit that the Advocate Commissioner cannot be used to gather evidence. In the instant case, the necessity of appointment of Advocate Commissioner arises only on account of the fact that the first defendant has come forward with a contention that Acre 0.21 cents of his property is not available on site. Both the defendants and plaintiff claim title under the same owner. The total extent in Survey No.98/1 is 4 acres. The first defendant even according to



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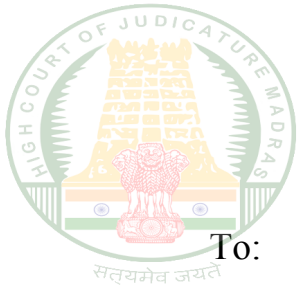
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his own statement, has purchased an extent of 3 cents and 51 acres, out of the said 4 acres, and the remaining is available on site. The plaintiff has purchased 21 cents of land in Survey No.98/1, therefore, it cannot be stated that the plaintiff had purchased the property which had been sold to the first defendant. This dispute can be set at right only if an Advocate Commissioner is appointed, who would visit, inspect, measure and note down the physical features of the property. Therefore, I see no reason to interfere with the order passed by the learned II Additional District and Sessions Judge, Tiruvallur at Poonamallee in I.A.No.1/2020 in O.S.No.173/2020.

17. The civil revision petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2025

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes / No
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To:

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1.The II Additional District and Sessions Judge
Tiruvallur at Poonamallee.

2.The Section Officer
VR Section
High Court, Madras.



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P.T. ASHA, J.

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