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CRP.No.4280 of 2025 and CMP.No.21977 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4280 of 2025

and

CMP.No.21977 of 2025

J.Kotiswara Rao

... Petitioner / Petitioner / Plaintiff

Versus

J. Durga Rao (Deceased)

1. N.Padmavathy
2. N.Vijayashankar
3. N.VijayaGanesh
4. J.Rajagopal Rao
5. J.Baskar Rao
6. D.Lakshmi Samrajyam
7. D.Sheela @ Usha Rani
8. D.Satyanarayanan

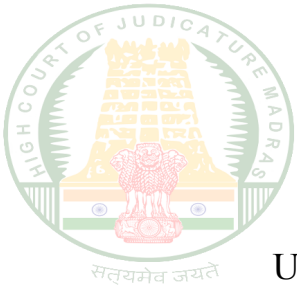
... Respondents / Respondents / Defendants

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 15.07.2025 passed in I.A.No.2 of 2025 in O.S.No.196 of 2020 on the file of the I Additional District and Sessions Judge, Cuddalore, by allowing the Civil Revision Petition.

For Petitioner

: Mr.T.S.Baskaran

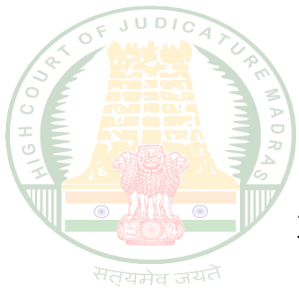
ORDER



Unsuccessful plaintiff has preferred the present Civil Revision Petition.

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2. The suit in O.S.No.196 of 2020, on the file of the I Additional District and Sessions Judge, Cuddalore, is filed seeking partition and for separate possession of 1/5th share in the suit 'B' Schedule property. The suit is posted for further evidence on the side of plaintiff. At this juncture, the plaintiff filed an application in I.A.No.02 of 2025 in O.S.No.196 of 2020 under Order XXVI Rule 9 and Section 151 of the CPC, praying for the appointment of an Advocate Commissioner to inspect the suit 'B' schedule property, to note down the physical features of suit 'B' schedule property with a qualified surveyor, measure the property, and file a report with a plan, with particular reference to the total area available. Upon considering the arguments advanced on either side, the Court below dismissed the application on the ground that, in a suit for partition, the rights and shares of the parties must first be determined, and only thereafter can division by metes and bounds be carried out, for which the actual extent of the property would be required. Aggrieved over the same, the revision petitioner has preferred the present revision petition.



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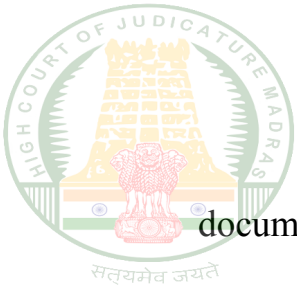
3. The learned counsel appearing for the revision petitioner would submit that, so far as the suit 'B' schedule property is concerned, the portions allotted to each sharer under the unregistered partition deed - as evidenced by the photostat copy marked as Ex.B1 during cross examination actually overlap with other sharers' allotted portions. Moreover, the total area mentioned in Ex.B1 is not available on the land, only a lesser extent exists. To establish the fact that area mentioned in Ex.B1 is not available and also to ascertain the actual area available on the land, it is just and necessary to appoint the Advocate Commissioner to inspect the suit 'B' schedule property and measure it with the assistance of a qualified surveyor. An appointment of an Advocate Commissioner will not prejudice the other side in any manner. Further, it will save the need for voluminous oral evidence to prove the case.

4. It is seen from the records that the suit has been filed for partition and separate possession of a 1/5 share in the suit 'B' schedule property. The plaint mentions that the 'A' schedule contains the Genealogical trees of the parties concerned, while the 'B' schedule describes the property situated in Nellikuppam Village, Block No.21, Town Survey No.26, 27 and 28, to an extent of 27,946 sq.ft. (Old survey No. 32/8, 32/9, 32/10, 32/11 & 32/16),



including vacant land and construction of three houses. It is further seen from the records that the plaintiff himself was examined as PW1. During his cross examination, an unregistered partition deed, the photostat copy of which was marked as Ex.B1. According to the revision petitioner, the portions allotted under 'B' schedule actually overlap with portions allotted to other shares, and the total area mentioned in Ex.B1 is not entirely available on the land, only a lesser extent of land is available.

5. At this Juncture, it may be apposite to cite the Judgment of this Court in ***Krishnamurthy, T.K. vs. Tamil Nadu Water and Drainage Board***, reported in ***2006(5) CTC 178***, wherein, it has been observed that Advocate Commissioner should not be appointed to gather evidence to prove the case of parties, since the parties should prove their case by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to just conclusion. Yet another Judgment of this Court in ***Minor Amid Stance & Another vs. Lakshmiammal & others***, reported in ***CDJ 2009 MHC 324***, wherein, it has been observed that the factum of possession cannot be ascertained by Commissioner, as the same could be proved by letting in oral and



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documentary evidence by the parties before the Court.

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6. In view of the above, there is no reason to interfere with the order passed in I.A.No.2 of 2025 in O.S.No.196 of 2020, dated 15.07.2025 on the file of the learned I Additional District and Sessions Judge, Cuddalore.

7. Accordingly, this Civil Revision petition is dismissed. Consequently, connected civil miscellaneous petition is closed. No costs.

11.09.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned I Additional District and Sessions Judge, Cuddalore.

M. JOTHIRAMAN, J.

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