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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.09.2025

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THE HONOURABLE MR JUSTICE M.JOTHIRAMAN

CRP.No.4556 of 2025

and CMP.No.23162 of 2025

L.Anbazhagan

... Petitioner/defendant

Vs.

1.D.Rani

2.R.Dhanasekaran

... Respondents/plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the I Additional Subordinate Judge, Cuddalore in I.A.No.154 of 2025 in O.S.No.350 of 2023 dated 15.07.2025

For Petitioner : Mr.K.Natarajan

ORDER

This civil revision petition has been filed to set aside the order dated 15.07.2025 passed by the I Additional Subordinate Judge, Cuddalore in I.A.No.154 of 2025 in O.S.No.350 of 2023.

2.The unsuccessful defendant has preferred this petition.

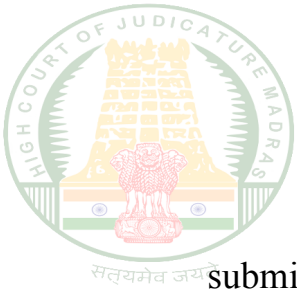


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3. The respondents/plaintiffs have filed the suit in O.S.No.350 of 2023 seeking declaration of title with respect to the suit property in favour of the 1st plaintiff/Rani and for permanent injunction.

4. The defendant has filed written statement. Necessary issues were framed and the case was posted for trial. At this stage, the defendant has filed an application in I.A.No.154 of 2025 in O.S.No.350 of 2023 under Order 26 Rule 10-A r/w. Section 151 of Civil Procedure Code to appoint advocate commissioner to collect (i) Book No.1/85, Document No.964 with the Sub Registrar Joint-II, Cuddalore and (ii) the document dated 18.06.1973, a registered sale deed executed by Vellachiammal filed there with and submit before the forensic department, Chennai for the expert and to collect the report and to file the expert report before the Court.

5. Upon hearing the either side arguments, the Court below vide order dated 15.07.2025, dismissed the application due to defective pleading and prayer.



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6. The learned counsel appearing for the revision petitioner would submit that the revision petitioner's mother Vellachiammal has not executed any document in favour of anyone else. So that the said document No.964/1973 shall be required to ascertain the thumb impression in the said settlement deed. The revision petitioner's mother Vellachiammal executed settlement deed in favour of the 1st plaintiff/Rani dated 11.06.1985 for the total extent of 72 cents, which is legally unsustainable; because as per the document executed by Vellachiammal in Document No.964/1973 dated 18.06.1973, the thumb impression pertaining to the settlement deed dated 11.06.1985 is totally different and contrary. The Court below has failed to consider that variation of thumb impression found in document No.964 of 1973 and subsequent alleged settlement deed document dated 11.06.1985 and dismissed the application which is legally unsustainable and the same is against law.

7. It is seen from records that the suit is filed seeking declaration and for permanent injunction. The defendant also filed written statement. It is seen from the affidavit filed by the revision petitioner in I.A.No.154 of 2025 the following relief has been stated in the petition and the same reads



hereunder:

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“It is prayed that an Advocate Commissioner may be appointed to collect the Book No.1/85, Document No.964 with the Sub Registrar Joint-II, Cuddalore and the document dated 18.06.1973 a registered sale deed executed by Vellachi Ammal filed herewith and to submit before the forensic Department, Chennai before the consent expert and to collect the report and to file the expert before this Court.”

8. Considering the nature of relief sought for in the petition, the Court below finds that failed to understand what is the admitted document as per the pleading and prayer of the revision petitioner and dismissed the application due to defective pleading and prayer in the IA., application.

9. It is well settled that party can not be suffered due to defective drafting of the pleadings and the prayer by the counsel representing the parties.

10. In order to decide the real controversy in issue between the parties



an opportunity may be provided to the defendant to establish his case.

However, the court below dismissed the IA.No.154 of 2025 on the ground of defective pleading and the prayer is unsustainable in law.

11. In order to provide an opportunity to the revision petitioner/defendant, and in the interest of justice, this court is inclined to grant liberty to file a fresh affidavit and petition by mentioning proper prayer in the petition if required. Upon filing such an application, if any, the Court below shall provide an opportunity to either parties in a manner known to law and dispose of the same expeditiously as possible.

12. With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

mpa

To

The I Additional Subordinate Judge, Cuddalore.

M.JOTHIRAMAN,J.

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