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C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.R.P.No.4889 of 2025

and

CMP.No.24659 of 2025

Seeralan

... Petitioner / Petitioner / Plaintiff

Versus

1. Selvaraj
2. Pazhani
3. The Government of Tamilnadu,
Rep. by the District Collector,
Mayiladuthurai District,
South Street, Mayiladuthurai Town.
4. The Tahsildar,
Kuttalam Taluk,
Kuttalam - Kumbakonam Main Road,
Kuttalam, Mayiladuthurai District.
5. The Sub Registrar,
Kuttalam, Kuttalam - Kumbakonam Main Road,
Mayiladuthurai.

... Respondents / Respondents / Defendants

Prayer:- Civil Revision Petition filed under Section 227 of Constitution of India, to set aside the fair and final order dated 28.06.2024, made in I.A.No.3 of 2023 in O.S.No.98 of 2023, passed by the Additional Sub Court, Mayiladuthurai.



C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

For Petitioner : Mr.B.Jawahar

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ORDER

Unsuccessful plaintiff has preferred the present Civil Revision Petition.

2. The Revision petitioner / plaintiff filed a suit in O.S.No.98 of 2023 on the file of the Principal Sub Court, Mayiladuthurai, seeking a declaration that the Sale deed dated 26.02.2023 is null and void, and for a consequential permanent injunction. The defendants filed their written statement, and the trial is yet to commence. At this stage, the plaintiff filed an application in I.A.No.98 of 2023 under Order XXVI Rule 9 of the CPC, seeking the appointment of an Advocate Commissioner to note down the physical features of the suit property and file a report. Upon hearing either side, the Court below *vide* order dated 28.06.2024, dismissed the application on the ground that the parties can prove their case by letting in oral and documentary evidence, and that an Advocate Commissioner cannot be appointed for the purpose of collecting evidence. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner would



C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

submit that the Court below failed to consider that, if an Advocate Commissioner had been appointed, his report would have been useful in deciding the suit, as it would have clearly established the physical features of the suit property. The first respondent / first defendant executed a sale deed in favour of the second defendant, describing the suit property as a vacant site, whereas, in fact, a hut has been constructed thereon and the petitioner is residing in it. The petitioner contends that the sale deed was executed collusively to grab her property, which is why the suit property was falsely described as vacant land.

4. It is seen from the records that on 26.02.2023, the first respondent / defendant executed in sale deed infavour of the second defendant describing the suit property as vacant land. In order to ascertain whether there exists a house or hut in the suit property, the petitioner sought appointment of an Advocate Commissioner. However, it is well settled that an Advocate Commissioner should not be appointed to gather evidence to prove the case of the 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



C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

(*Krishnamurthy, T.K. vs. Tamil Nadu Water and Drainage Board*, reported in *2006(5) CTC 178*). It is to be noted that the factum of possession can not be ascertained by Commissioner, as the same could be proved by letting in oral and documentary evidence by the parties before the Court.

5. In view of the above, there is no reason to interfere with the order passed in I.A.No.3 of 2023 in O.S.No.98 of 2023, dated 28.06.2024 on the file of the learned Additional Sub Court, Mayiladuthurai.

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

13.10.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned Additional Sub Court, Mayiladuthurai.

4/6



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C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

M.JOTHIRAMAN, J.

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C.R.P.No.4889 of 2025 and CMP.No.24659 of 2025

C.R.P.No.4889 of 2025
and
CMP.No.24659 of 2025

13.10.2025