

C.R.P.No.688 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.688 of 2025
C.M.P.No.3896 of 2025

K.Thangavelu ...Petitioner

Vs

Karuppu Udaiyar ...Respondent

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decretal order dated 18.11.2024 made in IA No.7 of 2024 in O.S.No.263 of 2014 on the file of the Court of II Additional District Judge at Salem.

For Petitioner : Mr.T.P.Prabakaran

ORDER

Challenging the dismissal of the petitioner's/plaintiff's application for scrapping the Commissioner's report and plan, the Civil Revision Petition has been filed.



C.R.P.No.688 of 2025

WEB COPY 2.The suit in question namely O.S.No.263 of 2014 on the file of the

II Additional District Judge, Salem, was filed by the plaintiff for a partition and separate possession of his half share in the suit property. The suit schedule property originally belonged to one Kandhasamy Udayar, the father of the plaintiff and defendant. The plaintiff and defendant had entered into a registered partition deed dated 25.03.1970. In the said partition, the plaintiff was allotted B schedule property and the defendant was allotted A schedule property. The partition deed further stipulated that their parents should enjoy the property till their demise. The said Kandasamy Udayar died on 05.11.1972 and his wife died on 13.02.1976. The plaintiff and the defendant were jointly enjoying the suit properties. The plaintiff has been demanding partition however, the defendant is not coming forward to partition the same. The defendant had resisted the said suit *inter alia* denying the allegations contained in the plaint and contending that the suit has been filed on an invented cause of action. The defendant had neither admitted nor confirmed the partition of the year 1970.

3.The defendant had taken out an application in I.A.No.132 of

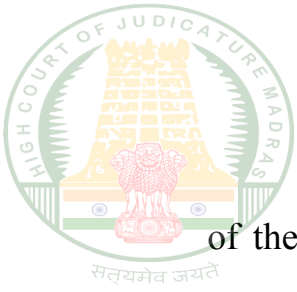


C.R.P.No.688 of 2025

WEB COPY

2017 for appointing an Advocate Commissioner to note down the physical features of the suit schedule property. The Advocate Commissioner has also submitted his report on 05.09.2023. However the plaintiff had filed I.A.No.7 of 2024 for scrapping this report and plan of the Advocate Commissioner. The petitioner/plaintiff would contend that without a final decree being passed the appointment of an Advocate Commissioner is premature and non est in the eyes of law. The plaintiff contended that he would file objections to the Commissioner's report and the Court has permitted it. Thereafter, the petitioner has filed application in I.A.No.6 of 2024 to examine the Advocate Commissioner. It was during one such arguments that the plaintiff realized that this plan and report has to be scrapped. The Advocate Commissioner prepared the plan without even identifying the possession. The property in question is an agricultural land and the parties are in occupation of their shares, over since the registered partition deed dated 25.03.1970. The report itself has wrongly taken note of the properties. Therefore, the petitioner has come forward with this application.

4.The same was resisted by the defendant by contending that the Advocate Commissioner had been appointed only on the joint agreement



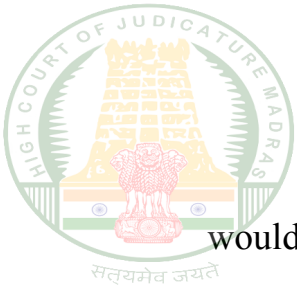
C.R.P.No.688 of 2025

WEB COPY

of the parties and remuneration of Rs.10,000/- was paid by each of the parties. The defendant submit that at the time of inspection no instructions were given by the plaintiff and during the measurement both parties were present and the application appears to be an after thought. Ultimately, the said application was rejected by the II Additional District Judge, Salem by taking note of the fact that plaintiff had filed I.A.No.6 of 2024 to permit him to cross examine the Advocate Commissioner which application has been ordered and at this juncture this application I.A.No.7 of 2024 is not maintainable.

5.Heard the learned counsel for the petitioner and perused the records.

6.The learned counsel for the petitioner who has taken out an application for examining the Advocate Commissioner in respect of his report has turned around to file the application for scrapping the report. Once I.A.No.6 of 2024 is filed to cross examine the Advocate Commissioner and the same has been allowed, if the application I.A.No.7 of 2024 is allowed, cross examination of the Advocate Commissioner would become redundant and consequently the order in I.A.No.6 of 2024



C.R.P.No.688 of 2025

would become unworkable. That apart the contention of the plaintiff that without preliminary decree, the learned Judge had ordered the final decree is absolutely misconceived since the application is only to note down the physical features of the property and not to divide the property by metes and bounds. The order of the Court below cannot be countenanced and consequently the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.02.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
ep

To

The II Additional District Judge at Salem.



WEB COPY



C.R.P.No.688 of 2025

P.T.ASHA, J,

ep

C.R.P.No.688 of 2025
C.M.P.No.3896 of 2025



WEB COPY



C.R.P.No.688 of 2025

20.02.2025