



CRP.PD.No.5364 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.PD.No.5364 of 2024

and

C.M.P.No.29770 of 2024

V.Balakrishnan

... Petitioner

Vs

1.K.Chandrasekar
2.Muthusowndaravalli
3.N.Nageswari
4.M.Vetriselvi

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against fair and final order passed in I.A.No.423 of 2024 in O.S.No.162 of 2023 on the file of the I Additional District Munsif Court, Tiruppur, dated 09.12.2024.

For Petitioner : Mr.Ma.P.Thangavel

For Caveator : Mr.N.S.Suganthan



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ORDER

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This Civil Revision Petition arises against the order passed by the learned I Additional District Munsif Court, Tiruppur, in I.A.No.423 of 2024 in O.S.No.162 of 2023, dated 09.12.2024.

2. The Civil Revision Petitioner is the plaintiff.

3. O.S.No.162 of 2023 is a suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the property.

4. The case of the plaintiff is that their predecessor in interest one Velusamy Gounder, together with one Kanagasabapathy Vaduganatha Gounder and one Balasubramania Gounder, purchased a large portion including the suit schedule mentioned property on 03.12.1959. Ten days thereafter, these three persons partitioned the property amongst



themselves. In the said partition, A-schedule property went to the share of Kanagasabapathy Vaduganatha Gounder, B schedule property fell to the share of Balasubramania Gounder and C schedule property was allotted to the share of Velusamy Gounder.

5. Velusamy Gounder passed away on 07.03.1983. The plaintiff and the other legal heirs of Velusamy Gounder partitioned the property amongst themselves by way of registered partition deed dated 27.11.2008. The cause of action for the suit is that on 03.09.2023, the defendants attempted to trespass into the property. This constrained the plaintiff to lodge a complaint with the Avinasipalayam Police Station against the alleged act of trespass. Being a civil dispute and since the defendants did not stop with their attempt to grabbing the property, the plaintiff brought forth the suit. Suit summon was served on the defendants.

6. The 3rd defendant filed written statement admitting to the fact



of purchase by Velusamy Gounder, Kanagasabapathy Vaduganatha Gounder and Balasubramania Gounder. He also accepted the date of partition on 11.12.1959.

7. He pleaded that Velusamy Gounder was allotted 1.25 acres under one side and 4 acres on the other with a common cart track running between two parcels of land. It was further pleaded that the property allotted to Velusamy Gounder is located east of the defendant's property, which is situate at S.F.No.74. On the death of Kanagasabapathy Vaduganatha Gounder, the defendants 1 to 4 succeeded to his estate as his legal heirs. Subsequent to this succession, they pleaded they are in possession and enjoyment of the property. The defendants further alleged that in the partition deed dated 27.11.2008, entered into *inter-se* the legal heirs of Velusamy Gounder, the boundaries were deliberately mis-described.

8. The case of the 3rd defendant is that the plaintiff is attempting



to grab the property that fell to the share of Kanagasabapathy Vaduganatha Gounder, on the strength of this misleading partition deed. They state that on account of the fact that the plaintiff wanted to grab their property, they attempted to interfere with the possession of the defendants.

9. Consequent there to, the defendants also presented a counter claim. In the counter claim, they sought for relief of declaration that the partition deed dated 27.11.2008, entered *inter-se* the legal heirs of Velusamy Gounder, is not binding on them and for permanent injunction restraining the plaintiff from interfering with the peaceful possession and enjoyment of items II and III of the counter claim schedule mentioned properties. A reply statement has also been received from the plaintiff to the counter claim.

10. Since there is a dispute regarding the identity of the pathway, an application was taken out by the defendants for appointment of an



Advocate Commissioner. According to them, the plaintiff had given wrong description of the property and had suppressed the common cart track that runs between the properties of the plaintiff and the defendants. Hence, they wanted an Advocate Commissioner to be appointed to measure the property on the basis of the admitted partition deed dated 11.12.1959 and for demarcation of the same. This application was resisted by the plaintiff stating that Advocate Commissioner cannot be appointed for the purpose of collection of evidence and therefore, they sought for dismissal of the petition.

11. The learned Trial Judge on appreciation of the affidavit and counter and came to a conclusion that a report by an Advocate Commissioner is essential and accordingly, appointed an Advocate Commissioner. Challenging the same, the plaintiff is on the revision.

12. I heard Mr.Ma.P.Thangavel, for the Civil Revision Petitioner. The respondents/Defendants/Counter claimants are represented by the



caveator, Mr.Suganthan.

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13. According to Ma.P.Thangavel, the appointment of Advocate Commissioner to measure the items II and III of the counter claimants' property is not maintainable. He states that the counter claimants are attempting to collect the evidence through the good office of the Advocate Commissioner. He urges an Advocate Commissioner cannot be appointed for this purpose and has to be proved through documents.

14. I have carefully considered the submissions of the learned counsel for the petitioner.

15. The dispute that has arisen between the parties concerns the properties that came into their respective hands on account of a partition deed that had been entered into their predecessor in title on 11.12.1959. It is the case of the plaintiff that there is no path ways whereas, it is clear and categorical case of the defendants, in the written



statement as well as in the counter claim that, in order to grab the property that had come to Kanagasabapathy Vaduganatha Gounder, the plaintiffs and other legal heirs of Velusamy Gounder had entered into the partition deed in 2008, including their properties also. The existence of the pathway on one hand is asserted by the counter claimants and is denied by the plaintiff. The matter in issue before the Court below on account of the counter claim being filed is on the very existence of the pathway.

16. The Supreme Court in ***Haryana Waqf Board vs. Shanti Sarup, (2008) 8 SCC 671***, held that where there is a dispute in the lie or identity of the property, an appointment of Court Commissioner is essential. That being the position of law, since there is a dispute as regards lie, extent and the area in which the alleged pathway is running, the learned Trial Judge has felt that the appointment of Advocate Commissioner is essential. I do not find any error in such an approach.



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17. In any event, appointment of Advocate Commissioner is a discretionary order. The learned Trial Judge has felt if a report of the Commissioner is before him, he would find it easy to render a just verdict in the suit and the counter claim. Unless such discretion has been exercised in an arbitrary or capricious manner, this Court should not interfere with the same in revision. Since there is a dispute on the identity and lie, I do not find any reason to interfere.

18. In the light of the above discussions, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.01.2025

Index: Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To

9/11



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The I Additional District Munsif Court,
Tiruppur.
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V.LAKSHMINARAYANAN, J.,

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