



C.R.P.(PD)(MD) No.84 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	21.01.2025
Pronounced on	29.01.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 84 of 2025 and
CMP(MD).No.510 of 2025

1.R.Thanikodi
Pandurengan (died)

2.Pushpavalli Periyasamy
3.Tamil Selvi
4.Albert Yalini

... Petitioners / Plaintiffs

Vs.

1.Janaki
2.Ramasamy

.. Respondents / Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 22.11.2024 passed in I.A.No.13 of 2024 in O.S.No.32 of 2021 on the file of the learned District Munsif Cum Judicial Magistrate Court, Ilayangudi.

For Petitioners : Mr. B.Prahalad Ravi

For Respondents : Mr.V. Muthukamatchi



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ORDER

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This Civil Revision Petition is preferred against the fair and decreetal order, dated 22.11.2024 made in I.A.No.13 of 2024 in O.S.No. 32 of 2021 on the file of the learned District Munsif-Cum-Judicial Magistrate Court, Ilayangudi.

2. The revision petitioners as plaintiffs filed the above suit in O.S.No.32 of 2021 on the file of the learned District Munsif-Cum-Judicial Magistrate Court, Ilayangudi for declaration of title, recovery of possession and for mandatory injunction against the respondents / defendants.

3. Pending suit, the revision petitioners took out an application in I.A.No.13 of 2024 for appointment of Advocate Commissioner to measure and demarcate the suit property with the help of Surveyor. The said application was resisted on the side of the respondents / defendants stating that the said application is filed only with an intention to fill up the lacuna. However, the trial Court dismissed the said application by stating that the measurement of the building is not necessary to decide the present



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suit for the reason that the suit has been filed only for recovery of vacant possession and therefore, the report and plan by an Advocate Commissioner in respect of the building in the suit property is not necessary. Challenging the same, the present revision is preferred.

3. Heard on both sides and perused the materials available on record.

4. On perusal of the impugned order passed by the trial Court it is seen that the trial Court has rendered a finding stating that the photographs and pen drive produced on the side of the revision petitioners are sufficient to decide the matter in dispute; that the oral and documentary evidence produced on either side is sufficient to decide the issue in dispute. The revision petitioners sought for appointment of Advocate Commissioner to inspect the suit property and measure the same based on the averments made in the written statement filed by the respondents / defendants, in which it is stated that the boundaries of the suit property are wrongly mentioned and therefore, the revision petitioners / plaintiffs were constrained to file the above application to identify the suit properties. Since it is the specific case of the revision



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petitioners that the respondents / defendants have encroached upon the portion of the suit property it is necessary to appoint an Advocate Commissioner to measure and demarcate the suit property with the help of Surveyor. Since the respondents / defendants have disputed the measurements and boundaries of the suit property, the suit property must be clearly identified with actual measurements and boundaries. Otherwise it will lead to so many complications. The controversy arises from the pleading of the parties cannot be demonstrated before the Court by any amount of oral evidence. In such circumstances, it would be just and necessary for this Court to allow this revision to measure the properties with respective title deeds, that will enable the trial Court to take a correct decision in this matter. In this view of the matter, the impugned order is un-sustainable in law.

5. In the circumstances, ordered as under:

i) The order, dated 22.11.2024 made in I.A.No.13 of 2024 in O.S.No.32 of 2021 on the file of the learned District Munsif-Cum-Judicial Magistrate Court, Ilayangudi. is hereby set aside and accordingly, this Civil Revision Petition is allowed.



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ii) The learned District Munsif Cum Judicial Magistrate Court, Ilayangudi will appoint an Advocate Commissioner who will visit the suit property, after due notice to both sides.

iii) The Advocate Commissioner will note down the physical features more particularly the boundaries and measurements as given in the suit schedule with reference to the title deeds of the plaintiffs and defendants and he will submit his report and plan to the trial Court.

iv) The trial Court will give reasonable time to both parties to file their objections if any.

v) The petitioners shall bare the Advocate Commissioner's Fee as as fixed by the trial Court.

No costs. Consequently, the connected Miscellaneous Petition is closed.

29.01.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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The learned District Munsif Cum Judicial Magistrate Court, Ilayangudi.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-Delivery Order made in
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