



C.R.P(NPD)(MD)No.96 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.96 of 2025
and C.M.P.(MD)No.587 of 2025

P.Thangavel

Represented by his Power Agent

Gopal

... Petitioner

Vs

1.Archunan

2.Palpandian

3.Chinnamuthu

4.Dharmar

5.Velu

... Respondents

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.09.2024 passed in I.A.No.1 of 2023 in A.S.No.27 of 2019 on the file of the learned Sub-Court, Theni.

For Petitioner : Mr.M.P.Senthil



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ORDER

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This Civil Revision Petition is filed against the fair and decreetal order dated 23.09.2024 passed in I.A.No.1 of 2023 in A.S.No.27 of 2019 on the file of the learned Sub-Court, Theni.

2. The facts in brief:

Suit in O.S.No.138 of 2011 was filed by this revision petitioner against the respondents seeking the relief of declaration that the property absolutely belongs to him and for mandatory injunction to remove the superstructure and for recovery of possession. The said suit was dismissed. Against which, A.S.No.27 of 2019 was filed by the revision petitioner. Pending the appeal process, I.A.No.1 of 2023 was taken out by this revision petition for appointment of Commissioner. That application came to be dismissed by the appellate Court. Against which, this revision is preferred.

3. I.A.No.1 of 2023 was taken out by the revision petitioner by setting out the following facts:



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He purchased the property on 10.06.2003 as a vacant site. The original survey number is 477. The total extent is 5 acres 65 cents. Later, it was sub-divided as 477/1B1 and 477/1B2. The northern portion measuring about 1.89 cent was sold to one Chitrasamban on 22.07.1929. Now his legal heirs are in possession. Later, the legal heirs of Chitrasamban sold the same to several persons. Some of the legal heirs viz., Seenikalai, Chellakallai and Andi @ Palraj executed general power of attorney in his favour on 23.04.2003. On that basis, he sold the property to the appellant on 10.06.2003. The defendants viz., respondents herein, who purchased the property not connected with the suit property, are claimed to right over the same. The respondents encroached upon the property and constructed a house. To show that the property purchased by the respondents 1 and 2 is not related to the suit property, but put up construction in this property, appointment of Commissioner is required.

4. There was no counter by the respondents. An *ex parte* order was passed dismissing the petition.



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5. Heard the learned counsel for the revision petitioner.

6. As stated in the preamble portion, the only point to be decided by the appellate Court is whether the suit property belongs to the appellant or to the respondents. There was no issue with regard to the identification of the property and construction. Suit property was mentioned as S.No.477/1B1 measuring about 0.07.5 ares corresponding to 19 cents and out of 19 cents, an extent about 1966-1/2 sq.ft. As stated above, the main contention of the revision petitioner is that the respondents have purchased some other properties, but encroached upon the suit property and put up construction. It is for the appellant herein to prove that the suit property belongs to him. There is no question of disproving the respondents' case. Whether the finding rendered by the trial Court is proper and based upon proper appreciation of evidence is the only point to be decided by the appellate Court. Regarding subdivisions, revenue records are sufficient for consideration and if the appellate Court, in the course of hearing, comes to the conclusion that identity of the property must be brought on record, the appellate Court can *suo motu* appoint Commissioner. But as on date, it appears that there



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is no confusion in the mind of the appellate Court regarding the identity of the property. So I do not find any reason to entertain the revision.

7. Accordingly, this Civil Revision Petition is dismissed even at the admission stage itself. Consequently, connected miscellaneous petition is closed. No costs.

27.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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G.ILANGOVA, J.

vsm

To

- 1.The Sub-Court, Theni.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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