



C.R.P.(MD).Nos.247 & 350 of 2025

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2025

CORAM:

THE HONOURABLE MR JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.247 & 350 of 2025

in

I.A.No.9 of 2024

in

O.S.No.103 of 2007

1.Rengasamy

2.Devendran

3.Selvamurugan

.. Petitioners/Respondents 2 & 3/ NIL

Vs.

1.K.Shanmugam

2.Kaliyamoorthy

.. Respondents 1 & 2/4th respondent/2nd
and 1st defendant.

In both CRPs

For Petitioners : Mr.A.Sivasubramanian

For R1 : Mr.M.P.Senthil

Prayer in CRP(MD).No.247 of 2025: This civil revision petition is filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 08.01.2025 in I.A.No.10 of 2024 in OS.No.103 of 2007 on the file of the Principal District Munsif Court, Thanjavur and set aside the same.



C.R.P.(MD).Nos.247 & 350 of 2025

Prayer in CRP(MD).No.350 of 2025: This civil revision petition is filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 08.01.2025 in I.A.No.9 of 2024 in OS.No.103 of 2007 on the file of the Principal District Munsif Court, Thanjavur and set aside the same.

COMMON ORDER

The plaintiffs in O.S.No.103 of 2007 on the file of the Principal District Munsif Court, Thanjavur have filed the above civil revision petitions, challenging the order of the trial Court wherein the defendant's application for re-opening and to recall PW1 for further cross-examination have been allowed.

2. The petitioners herein have filed the above said suit for the relief of declaration of title and recovery of possession. When the suit was posted for cross-examination of the defendants, they had filed I.A.Nos. 9 & 10 for the appointment of an advocate commissioner to measure the entire survey number namely, S.No.144/5 or in the other alternative survey No.144/5C. The said application was dismissed by this Court and the defendants had preferred CRP.(MD).No.2084 of 2024 and this Court was pleased to dismiss the said revision petition.



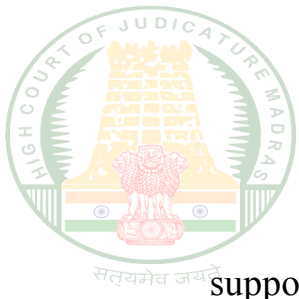
C.R.P.(MD).Nos.247 & 350 of 2025

WEB COPY

3. The plaintiffs have filed I.A.No.408 of 2024 for re-issuance of warrant to the advocate commissioner. This application was dismissed by the trial Court on 10.01.2022. Challenging the same, the plaintiffs have filed C.R.P(MD).No.1055 of 2022 before this Court and the civil revision petition was allowed on 18.08.2023, permitting re-issuance of warrant to the advocate commissioner. Pursuant to the same, the commissioner had visited the property and filed a report on 13.07.2024.

4. In the light of the above said facts, petitioners have filed I.A.Nos.9 & 10 of 2024 to re-open the case and to recall P.W.1 for the purpose of further cross-examination of P.W.1. The defendants have contended that since PW1 was cross-examined prior to the filing of the second report by the advocate commissioner, P.W.1 has to be recalled for further corss-examination based on the second report. This request of the defendants was accepted by the trial Court and both these applications came to be allowed. Challenging the same, the plaintiffs have filed the above said revision petitions.

5. According to the learned counsel appearing for the petitioners, the defendant is again and again attempting to measure the entire S.Nos. 144/5 and was not successfull. The paragraph 9 of the affidavit filed in



WEB COPY

support of I.A.No.9 of 2024, I.A.No.10 of 2024 would reveal the intentions of the defendants to measure the entire survey number and therefore, the present application for recalling P.W.1 ought not to have been allowed by the trial Court.

6. *Per-contra*, the learned counsel appearing for the respondent/defendant had contended that the commissioner's report was filed after cross-examination of P.W.1 was completed and therefore, P.W.1 was recalled only for the purpose of further cross-examining with reference to the second commissioner's report and they would not entertain to put any questions relating to the other issues. He further submitted that the cross-examinations will be completed in a single day. Therefore, they prayed for sustaining the order of the trial Court.

7. Heard both sides and perused all the materials available on record.

8. The dates and events captured above will clearly indicate that after the cross-examination of P.W.1 was over, under the directions of this Court, the warrant has been re-issued to the commissioner and he has filed his report on 13.07.2024. In such circumstances, the request of the defendants to recall P.W.1 with regard to certain observations made in the



C.R.P.(MD).Nos.247 & 350 of 2025

WEB COPY

commissioner's report cannot be found fault with. However, it is made clear that the cross-examination of P.W.1 should be restricted to the findings of the commissioner in the second report and any attempt made on the part of the defendants to again re-open the issue with regard to measuring entire survey No.144/5 cannot be entertained. The cross-examination of PW1 shall be completed on a single day.

9. With the above observations and directions, both of these revision petitions stand disposed of. No costs.

28.02.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes
nst
To
The
Principal District Munsif Court,
Thanjavur.



WEB COPY



C.R.P.(MD).Nos.247 & 350 of 2025

R.VIJAYAKUMAR, J.

nst

C.R.P.(MD).Nos.247 & 350 of 2025

Dated: 28.02.2025
(2/2)