



C.R.P.(MD)No. 290 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.290 of 2022

and

C.M.P.(MD)No.1301 of 2022

C.Ganesan

...Petitioner

Vs.

V.Nainar (died)

1.Gomu

Muthukrishnana (died on 25.02.2021)

2.Lakshmi

3.Boomadevi

4.Perumal

5.Vaikundaperumal

6.Sudalaimani (died)

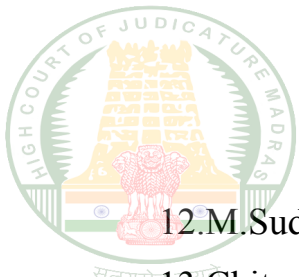
7.Manikandan

8.Kannan

9.Priya

10.Selvakumar

11.Pappammal



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12.M.Sudalaimani

13.Chitra

...Respondents

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[R13 is brought on record as LR of the deceased 6th respondent vide Court order dated 26.06.2025 made in CMP(MD)Nos.14979, 14981 and 14990 of 2024]

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the fair and Decreetal order dated 09.12.2019 passed in I.A.No.01 of 2019 in A.S.No.28 of 2017 on the file of the Additional Subordinate Judge, Tirunelveli, by allowing this Civil Revision Petition.

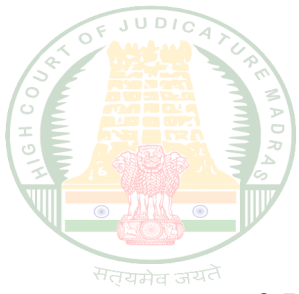
For Petitioner : Mr.V.Meenakshisundaram

For Respondents 2,3,5,8,9,11 & 12 : Mr.T.Selvam

For Respondents 1,4,7 & 10 : No Appearance

ORDER

This petition has been filed seeking to set aside the fair and Decreetal order dated 09.12.2019 passed in I.A.No.01 of 2019 in A.S.No.28 of 2017 on the file of the Additional Subordinate Judge, Tirunelveli.

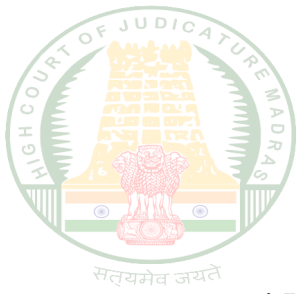


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2.Learned Counsel for the petitioner would submit that the petitioner is the plaintiff in O.S.No.305 of 2014, on the file of Principal District Munsif Court, Tirunelveli. He filed a suit for declaration, mandatory injunction and for recovery of possession. However, after adjudication, the suit was partly decreed on 06.02.2017, with respect to declaration of suit schedule property and in respect of other reliefs namely, recovery of possession and mandatory injunction, the suit came to be dismissed. As against the same, the petitioner has preferred an appeal before the Lower Appellate Court in A.S.No.28 of 2017.

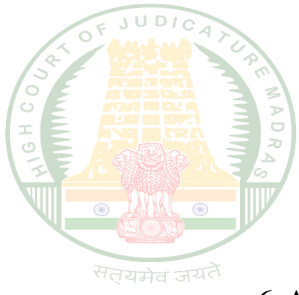
3.Learned Counsel for the petitioner would further submit that during the pendency of the appeal, the petitioner filed an application under Order 26 Rule 9 of CPC in I.A.No.1 of 2019, for re-issuance of warrant to Advocate Commissioner, stating that the Advocate Commissioner's report and the plan are contrary to each other and the contradiction lead to wrong findings by the trial Court. Therefore, the petitioner filed an application to re-issue warrant for the very same Commissioner to measure the suit schedule property along with Town Surveyor and file a fresh report before the Lower Appellate Court. The said I.A. came to be dismissed. Challenging the same, the present Civil Revision Petition has been filed. Accordingly, he prays for appropriate orders.



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4.Learned Counsel for the respondents would fairly submitted that the report states that the property of the petitioner is situated in the western side of the respondents whereas in the plan, the property of the petitioner is situated in the eastern side. However, he would further submit that the plan is right but the direction mentioned by the Advocate Commissioner is wrong. For that purpose, no re-issuance of warrant is required and therefore, he prays for appropriate orders from this Court.

5.The Court perused the report of the Advocate Commissioner. The report does not contain any date of filing. A perusal of paragraph No.3 of the Advocate Commissioner's report states as if the property of the defendants is situated in western side of the plaintiff, whereas upon verification of the plan it is found that the property is situated in the eastern side. In view of the discrepancy in between the report and the plan, it is necessary for appointment of Advocate Commissioner and for filing of a proper report with the help of the Town Surveyor. Hence, the order of the trial Court is set aside.



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6. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

02.07.2025

Internet: Yes/No

Index: Yes/No

MR



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To

- 1.The Additional Subordinate Judge,
Tirunelveli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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