



C.R..P.(PD)(MD).No.375 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.375 of 2025

and

C.M.P(MD) No.2143 of 2025

Shahul Hameed

... Petitioner/
Petitioner/Plaintiff

Vs.

1. Syed Ali

2. Mohammed Ali

... Respondents 1 and 2/
Respondents 1 and 2/
Defendants 1 and 2

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 16.11.2024 made in I.A.No.3 of 2022 in O.S.No.93 of 2022 on the file of the Subordinate Court, Kuzhithurai, and set aside the same and allow this Civil Revision Petition.

For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.S.Vashik Ali



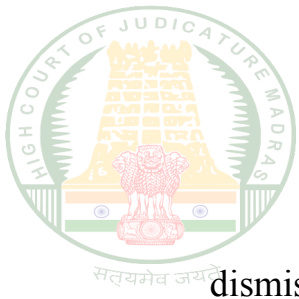
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ORDER

The plaintiff in O.S.No.93 of 2022 on the file of the Sub Court, Kuzhithurai, has filed the present Civil Revision Petition challenging the dismissal of his application for appointment of an Advocate Commissioner to measure and prepare a plan of plaint “A” schedule property and locate the plaint “B” schedule property including the buildings and note down the physical features of plaint “A and B” schedule properties.

2. The petitioner herein has filed the above said suit for the relief of declaration of title and permanent injunction over “B” schedule property having an extent of 1.5 cents. According to the plaintiff, “A” schedule is a larger extent having 99.375 cents and “B” schedule having an extent of 1.5 cents and is part of “A” schedule property. According to the plaintiff, pending suit, the defendants have encroached beyond an extent of 1.5 cents and have extended their encroachment of to an extent of 3 cents in “B” schedule property. Making such allegations, I.A.No.3 of 2022 was filed for appointment of an Advocate Commissioner to note down “A” schedule property and locate the “B” schedule property. This application came to be



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dismissed by the trial Court. Challenging the same, the present Civil Revision Petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, the defendants have encroached more than “B” schedule property and they have encroached some extent in “A” schedule property also. The extent of encroachment in the “A” schedule property can be found out only if the Commissioner visits the property along with a qualified surveyor.

4. Per contra, the learned counsel appearing for the respondents herein had contended that when there is an allegation of further encroachment in the “A” schedule property, without amending the plaint, a prayer for an appointment of an Advocate Commissioner cannot be sought for. He further contended that there is a dispute whether “B” schedule property is part of “A” schedule property or not. He further contended that the entire burden upon the plaintiff to establish his title and right to seek recovery of possession. The plaintiff cannot collect evidence by way of appointment of an Advocate Commissioner.



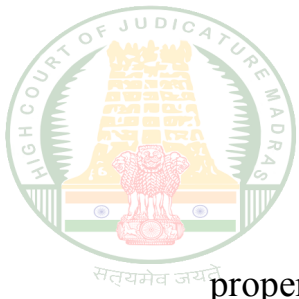
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5. Heard both sides and perused the material on records.

6. The suit has been filed for the relief of declaration of title and recovery of possession over “B” schedule property having an extent of 1.5 cents. According to the plaintiff, “B” schedule property is the part of “A” schedule property. Pending suit, according to the plaintiff, the defendants have encroached beyond 1.5 cents in “B” schedule property and encroached “A” schedule property also. In such circumstances, unless the Commissioner is appointed it is difficult to locate the property within “B” schedule property. However, the trial Court has chosen to dismiss the application on the sole ground that when the plaintiff has admitted the possession of the defendants in the B schedule property no purpose would be served upon the appointment of an Advocate Commissioner.

7. The trial Court has not taken into consideration the allegations made by the plaintiff in paragraph Nos. 12 and 13 of the affidavit. These allegations are un-controverted in the counter filed by the defendants in the Commissioner's application. In such circumstances, unless an Advocate Commissioner is appointed, it would be difficult to locate in the “B” schedule



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property within “A” schedule property. In such circumstances, the order of the trial Court is not legally sustainable. The order impugned in the Civil Revision Petition is set aside.

8. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

10.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Court,
Kuzhithurai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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