



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.03.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.472 of 2023

1.Rukmani
2.Niroja
3.Venkateswaran

...Petitioners/Petitioners/Plaintiffs

Vs

1.Ramalingam
2.Arumbu
3.Manthiramoorthy
4.Karunamoorthy
5.Usharani
6.Vijayaragavan
7.Subash
(Notice to the 6th respondent
may be dispensed with)

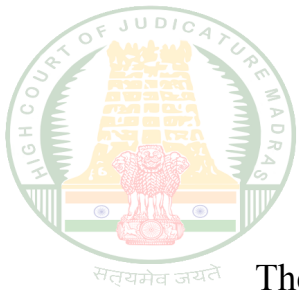
...Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, as against the fair and decreal order made in I.A.No. 1 of 2022 in O.S.No. 233 of 2018, on the file of the District Munsif Court, Pattukkottai, dated 08-12-2022.

For Petitioners : Mr.N.Balakrishnan

For Respondents : Mr.S.Deenadhayalan for R1
No appearance for R2 to R5 and R7
R6- Dispensed with

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ORDER

The plaintiffs in O.S.No.233 of 2018, on the file of the District Munsif Court, Pattukottai, have filed the present revision petition, challenging the dismissal of their application for appointment of Advocate Commissioner to note down the physical features of the property along with a report and plan.

2.A perusal of the records reveal that the revision petitioners herein had filed the above said suit for the relief of declaration of title over 'A' schedule property. The plaintiffs had further prayed for recovery of possession of items Nos.1 and 2 of the "B' schedule property from the first defendant. The plaintiffs had further prayed for recovery of possession of third item of the "B' schedule property from the defendants 2 to 7.

3.Pending suit, the plaintiffs had filed I.A.No.1 of 2022, for appointment of Advocate Commissioner to note down the physical features of the property along with rough sketch and report.

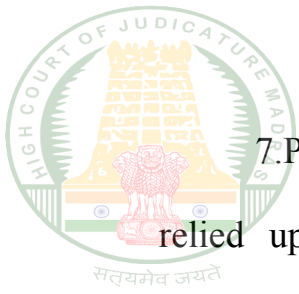
4.According to the plaintiffs, the defendants in the suit have claimed that they are not in possession of survey numbers which are pointed out in the plaint schedule. In such circumstances, the Advocate Commissioner has to be appointed to note down which of the defendants are in possession of which survey numbers. This application was resisted by the defendants on the ground



that the plaintiffs are attempting to collect the evidence through the Advocate Commissioner. The trial Court has accepted the contentions of the defendants and dismissed the petition. Challenging the same, the present revision petition has been filed.

5. According to the learned counsel appearing for the revision petitioners, a suit had been filed alleging that some of the defendants are in possession of certain particular survey numbers. However, in the written statement, the same has been disputed by them. In such circumstances, unless an Advocate Commissioner is appointed to find out which of the defendants are in possession of the respective survey numbers, it would be difficult for the plaintiffs to establish their case.

6. The learned Counsel appearing for the revision petitioners, relying upon the judgments of this Court reported in **1999 (2) MLJ 526 and 2019 (2) MWN(Civil) 514**, had contended that appointment of Advocate Commissioner is necessary in order to minimise the oral and documentary evidence. Further, it would not cause any prejudice to the defendants. He further relied upon the judgment of this Court reported in **2009 (1) TLNJ 145 (Civil)** and contended that the application has been filed only to enlighten the Court and not to fish out any evidence.



7.Per contra, the learned Counsel appearing for the respondents herein relied upon the averments in I.A.No.1 of 2022 had contended that the application has been filed for the specific purpose to find out the possession of the defendants. The Advocate Commissioner can decide about the possession of the parties.

8.I have considered the submissions made on either side and perused the materials available on record.

9.The prayer in the suit will clearly reveal that the plaintiffs have categorically averred that which of the defendants are in possession of which items of the property. The said facts have been specifically disputed by the defendants. Therefore, the burden would be upon the plaintiffs to establish that the defendants are in possession of those particular items of the properties.

10.A perusal of the affidavit filed in I.A.No.1 of 2022, reveals that the petitioners want to appoint an Advocate Commissioner for the purpose of finding out the possession of the defendants with regard to the various survey numbers. Therefore, it is clear that the application has been filed only to find out whether the defendants are in possession of the respective items of the suit schedule property or not.



11.It is settled position of law that an Advocate Commissioner cannot be appointed to find out the possession of any one the parties to the proceedings.

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12.As far as the judgments relied upon by the learned Counsel appearing for the revision petitioners are concerned, those cases relate to suits, where the identity of the the suit schedule property was in dispute. As far as the judgment in **2009 (1) TLNJ 145(Civil)** is concerned, there was a dispute with regard to existence of the cart track. However, in the present case, there is no dispute with regard to the identify or lie or location of the suit schedule property. In such circumstances, the prayer sought for, appointment of Advocate Commissioner is not sustainable. The trial Court has rightly rejected the application. There are no merits in the revision petition.

13.Accordingly, this Civil Revision Petition stands dismissed. No costs.

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Internet:Yes/No
Index:Yes/No
RJR



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To

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R.VIJAYAKUMAR, J.

RJR

The learned District Munsif, Pattukkottai.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

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