

CRP(MD). No.537 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05/06/2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.537 of 2020
and CMP(MD) No.3385 of 2020**

1.Pious Gomez
2.Joys Pious Gomez

... Petitioners/
Petitioners/Plaintiffs

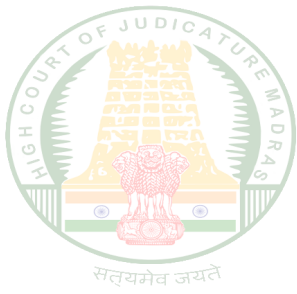
Vs

1.Nirmalan
2.Bindhu
3.Radhakrishnan
4.Suja @ Maniamma
5.Chandrika
6.The Tamil Nadu Mercantile Bank Ltd
Rep. by its Special Officer,
Tirunelveli Region, Tirunelveli
7.Vijayan
8.Reghuvaran
9.Suja
10.Ragini
11.C.T.Valsalaraj
12.Sushamma

... Respondents/Defendants

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.11.2019 in IA No.1/2019 in AS No.151 / 2015 on the file of the Sub Court, Kuzhithurai.

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For Petitioners : Mr.T.Antony Arulraj
For Respondents : Mr.N.Dilipkumar for R6
Ms.J.Anandhavalli for R8 and R12
No appearance for R2, R4,R7, R10,R11

ORDER

The civil revision petition is filed against the fair and executable order dated 13.11.2019 in IA No.1/2019 in AS No.151/2015 on the file of the Sub Court, Kuzhithurai.

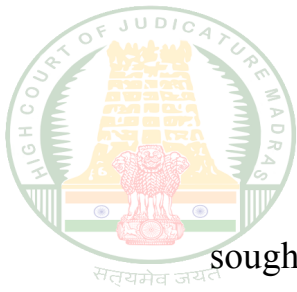
2.The petitioners are the plaintiffs and they filed a suit for recovery of possession. The said suit was dismissed. Aggrieved by the said dismissal, the petitioners/plaintiffs filed an appeal before the lower appellate Court in AS No.151/2015 and the same is pending. In the said appeal, an interlocutory application was filed by the plaintiffs for appointment of Advocate Commissioner to identify the plaint B Schedule property with the help of Taluk Surveyor and the same was dismissed. Challenging the same, they are before this Court with this civil revision petition.



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3. The learned counsel for the petitioners would submit that while adjudicating the original suit before the trial Court, the plaintiffs prayed for appointment of advocate commissioner, wherein, Advocate Commissioner was appointed. However, no report has been filed by the Advocate Commissioner on the ground that the Taluk Surveyor has passed away at that point of time and the suit was also dismissed. Hence, in the appeal, the petitioners filed an application once again for appointment of Advocate Commissioner to identify the suit B schedule property with the help of Taluk Surveyor. However, now, the learned counsel for the petitioners, on instructions, restricted his prayer that a direction may be issued to appoint an Advocate Commissioner to measure the property on the basis of the sale deeds possessed by the respective parties and for filing a report.

4. However, the learned counsel for the respondents 8 and 12 would submit that the lower appellate Court has rightly dismissed the petition for appointment of Advocate Commissioner, since the very same prayer has been allowed in the original suit and no report was filed by the earlier Advocate Commissioner. In the appeal also, the plaintiffs have



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sought for the same relief, which was filed only to fill the lapses on their part. Hence, she prays for dismissal.

5. The learned counsel for the respondent Bank has no objection for appointment of Advocate Commissioner to measure the suit B schedule property.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank and respondents 8 and 12 and perused the materials available on record.

7. The original suit filed for removal of trespass and recovery of possession, damages and for injunction. The same was dismissed, against which, the petitioners/plaintiffs filed an appeal and the appeal is pending. Pending appeal, the plaintiffs sought for appointment of Advocate Commissioner by filing an interlocutory application, which was dismissed on the ground that when the description and boundary of the suit B schedule property itself is wrong, appointment of Advocate Commissioner will not serve any purpose. However, now, the learned



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counsel for the petitioner restricted his relief to the extent of measuring the property alone.

8. Since no prejudice would be caused to any of the parties in appointing an Advocate Commissioner to measure the property, on the basis of the sale deeds possessed by the respective parties and further the Advocate Commissioner's report is only a piece of evidence not for arriving at a conclusion but for determining the extent of the property alone, the civil revision petition is disposed of with a direction to the trial Court to appoint an Advocate Commissioner within two weeks from the date of receipt of a copy of this order to measure the property with the help of the Taluk Surveyor on the basis of the sale deeds of respective parties. While appointing the Commissioner, it is open to the trial Court to appoint the very same Commissioner or a suitable Commissioner. No costs. Consequently connected Miscellaneous Petition is closed.

05.06.2025

NCC : Yes/No
Index : Yes/No

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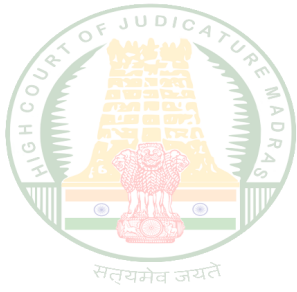
TO

1.The Sub Court, Kuzhithurai

2.VR Section

Madurai Bench of Madras High Court, Madurai.

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M.DHANDAPANI,J

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**ORDER
IN
CRP(MD) (NPD) No.537 of 2020**

Date : 05/06/2025