



C.R.P.(PD)(MD) No. 934 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on	27.01.2025
Pronounced on	28.02.2025

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No. 934 of 2022 and
CMP(MD).No.3720 of 2022

- 1.Pooraja (died)
- 2.Murugeswari
- 3.Ponamanikandan
- 4.Pon Iswarya
- 5.Pon Hariharan

... Revision petitioners

(petitioners 2 to 5 are brought on record
as LR's of the deceased sole petitioner vide
Court order, dated 18.11.2024 made in CMP(MD).Nos.
12888, 1289 and 12891 of 2024 in
CRP(MD).No.934 of 2022 by KGTJ)

Vs.

Vijayalakshmi

... Respondent / Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 12.11.2024 passed in I.A.No.6 of 2021 in O.S.No.151 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.



WEB COPY



C.R.P.(PD)(MD) No. 934 of 2022

For Petitioners : Mr. M.P.Senthil

For Respondent : Mr. N. Muthuvijayan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 12.11.2024 made in I.A.No.6 of 2021 in O.S.No. 151 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

2. The deceased revision petitioner viz., Pooraja is the defendant in the above suit. The respondent as the plaintiff filed the above suit in O.S.No.151 of 2015 on the file of the Principal District Munsif Court, Thoothukudi for permanent injunction and for mandatory injunction for removing the encroachment and obstructions in the plaint “B” schedule property. The case of the plaintiff is that the suit property originally belonged to one Sarkarai Nadar, father of the respondent / defendant. After his demise, the suit schedule property, devoid upon his legal heirs i.e., his wife Ponnuthai and his daughter, the respondent herein. Subsequently, the mother Ponnuthai also died and the respondent became



C.R.P.(PD)(MD) No. 934 of 2022

absolute owner of the suit property. The revision petitioner / defendant has encroached “B” schedule property and hence, the plaintiff was constrained to file the above suit.

3. In the written statement filed by the revision petitioner / defendant, the title of the plaintiff was denied and it is further stated that the suit property was not owned by said Sakarai Nadar and his legal heirs. It is further stated that the suit property is located in Mullukadu Village in S.No.396/6 with an extent of 35 acres which originally belonged to one Thiraviyam, son of Samuvel Nadar. Later, the suit property was leased out to one Pillaiyar Nadra i.e., his grandfather. After his demise, the suit property devolved on his father viz., Pon Nadar and after his demise, the property devolved on the revision petitioner / defendant. Therefore, it was contended that the respondent / plaintiff is not the original owner of the suit property and prayed for dismissal of the suit.

4. Pending suit, the revision petitioner / defendant filed an application in I.A.No.6 of 2021 seeking permission of the Court for examining one Mukesh as witness on his side as further evidence. In the said petition, it was averred that the said Mukesh is owning the property



C.R.P.(PD)(MD) No. 934 of 2022

adjacent, i.e., to the western side of the suit schedule property and

therefore, the said Mukesh has to be examined and prayed for issuance of
summon to the said individual. The said application was resisted on the
side of the respondent / plaintiff stating that during the time of cross
examination, the plaintiff has admitted that one Murugesan is residing on
the western side of the suit schedule property and the Commissioner's
report also revealed that the revision petitioner / defendant has encroached
upon the “B” schedule property and therefore, there is no necessity to
examine the said Murugesan as witness on the side of the defendant. The
trial Court also dismissed the said application. Aggrieved by the same,
the present Civil Revision Petition is preferred.

5. The learned counsel appearing for the revision petitioner submits
that the trial Court has completely mis-construed the provision under
Section 131 of the Indian Evidence Act and erroneously dismissed the
application filed by the revision petitioner herein. It is submitted that
Section 131 of Indian Evidence Act, relates to production of any
documents and that nobody can be compelled to produce any document in
his possession. But, the relief sought for in the above application is only
to examine the said Murugesan as witnesses on the side of the revision



C.R.P.(PD)(MD) No. 934 of 2022

petitioner / defendant. Hence, prayed for setting aside the order passed in

WEB COPY I.A.No.6 of 2021 in O.S.No.151 of 2015 on the file of the Principal District Munsif Court, Thoothukudi.

6. On the other hand, the learned counsel appearing for the respondent submits that on 24.01.2020 the revision petitioner / defendant was cross examined on the side of the plaintiff. At the time of cross examination, the revision petitioner / defendant admitted that the said Murugesan is having lands on the western side of the suit property. But, the present application is filed by the revision petitioner to examine one Mukesh by stating that the said Mukesh is residing on the Western side of the suit property. It is further submitted that in pursuant to the order passed in the application filed by the respondent / plaintiff in I.A.No.637 of 2015, Advocate Commissioner was appointed, who in his report has categorically stated that the revision petitioner / defendant has encroached upon the suit property. Therefore, there is no necessity to examine the said Mukesh as witness. The intention of the revision petitioner is only to delay the further proceedings in the suit. Hence, the trial Court has rightly rejected the said application, which calls for no interference by this Court.

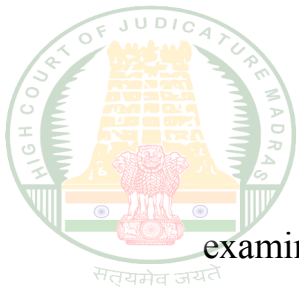


C.R.P.(PD)(MD) No. 934 of 2022

WEB COPY 7. Heard on both sides. Records perused.

8. On perusal of the records it is seen that the revision petitioner / defendant during his examination has stated that the one Murugesan is residing on the Western side of the suit property. Now, he had come out with an application to examine one Mukesh as witness to state that the said Mukesh is residing on the western side of the suit property. Section 131 of the Indian Evidence Act contemplates that “No one shall be compelled to produce documents in his possession of electronic records under his control which any other person would be entitled to refuse to produce if they were in his possession or control, unless such last -mentioned person consents to their production.

9. But, in the present case, the relief sought for in the application in I.A.No.6 of 2021 is not for production of any document and it is only for examination of one Mukesh as witness on the side of the revision petitioner / defendant. Therefore, the findings of the trial Court that no person can be compelled to be examined as witness is unsustainable. Moreover, no party should ordinarily be denied the opportunity of



C.R.P.(PD)(MD) No. 934 of 2022

examining the witnesses to meet the ends of justice. Order 16 Rule 10

WEB COPY

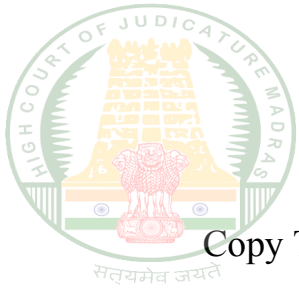
CPC clearly states that summons shall be issued to any person to examine him as witness to arrive at a fair conclusion. By examining the said witness, the Court can come to the conclusion who is actually owning the land on the western side of the property. No prejudice would be caused to the other side. It appears to be necessary to examine the said witness to determine the real question of controversy between the parties. In view of the above, the order, dated 12.11.2024 passed in I.A.No.6 of 2021 in O.S.No.151 of 2015 on the file of the Principal District Munsif Court, Thoothukudi is liable to be set aside and accordingly, set aside.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2025

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

trp



C.R.P.(PD)(MD) No. 934 of 2022

Copy To:

WEB COPY

The Principal District Munsif Court, Thoothukudi.



WEB COPY



C.R.P.(PD)(MD) No. 934 of 2022

K.GOVINDARAJAN THILAKAVADI, J.

trp

Pre-Delivery Order made in
C.R.P.(MD) No. 934 of 2022 and
CMP(MD).No.3720 of 2022

28.02.2025