

C.R.P.(MD).Nos.1465 & 1466 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON: 05.02.2025

DELIVERED ON: 10.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(MD).Nos.1465 & 1466 of 2022
and CMP(MD).Nos.6075 & 6076 of 2022**

Johnson alias Malayandi (died)

1.Janet

....Petitioner

Vs

Clement (died)

1.Mariamamma

2.Salomi

3.Jujin Francis

4.Mary Prasophi

5.Sebastin

6.Sibi

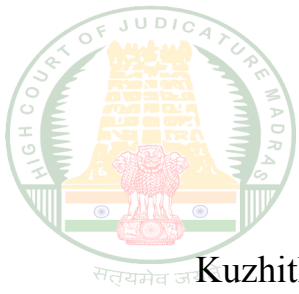
7.Mary Stella

8.Soosai Fready

9.Ariba Beevi

...Respondents

PRAYER In CRP(MD).No.1465 of 2022: Civil Revision Case is filed under Article 227 of Constitution of India, to allow the civil revision petition and set aside the order and decreetal order in I.A.No.1 of 2021 in O.S.No.500 of 2008 on the file of the II Additional Munsif Court,



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Kuzhithurai dated 26.04.2022.

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PRAYER In CRP(MD).No.1466 of 2022: Civil Revision Case is filed under Article 227 of Constitution of India, to allow the civil revision petition and set aside the order and decretal order in I.A.No.2 of 2021 in O.S.No.500 of 2008 on the file of the II Additional Munsif Court, Kuzhithurai dated 26.04.2022.

For Petitioner : Mr.V.M.Balamohan Thambi
in both revision petitions

For Respondents :Mr.M.R.Sreenivasan for R8
in both revision petitions

COMMON ORDER

Both the revisions have been filed by the third defendant in O.S.No.500 of 2008 on the file of the II Additional District Munsif Court, Kuzhithurai.

2.CRP(MD).No.1465 of 2022 has been filed challenging an order wherein the applications filed by the respondent 1 to 8/plaintiffs to scrap the commissioner's report and for a consequential direction to reissue warrant to the commissioner has been allowed. CRP(MD).No.1466 of 2022 has been filed wherein the prayer of the plaintiffs for amending the plaint with regard to the suit survey number has been allowed.



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(A)Factual Matrix:

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3.The respondents 1 to 8 herein as plaintiffs have filed the above said suit for the relief of declaration of title and possession over the suit schedule property with consequential injunction restraining the defendants from trespassing or commit any disturbance of the plaintiffs' possession or enjoyment over it. The plaintiffs had mentioned the suit survey number as 329/5C and has also filed a computer patta for the above said survey number. Pending suit, the original plaintiff namely Clement had passed away and his legal heirs have filed applications to condone the delay, set aside the abatement and to bring on record the legal heirs. Those applications were dismissed. Challenging the same, the legal heirs had filed CRP(MD).Nos.1313 to 1315 of 2016. This Court by an order dated 04.09.2018 had allowed the three revision petitions along with a direction to appoint an Advocate Commissioner to localise the suit property by taking assistance of the Taluk Surveyor. This Court had further recorded that the plaintiff is claiming title in Survey No.329/5C while the defendants are making a claim over Survey No.329/5B.

4.In compliance with the order of this Court, an Advocate Commissioner was appointed. The plaintiffs' counsel had submitted a



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memo to ascertain various facts. The commissioner had filed his report on 20.12.2019. Thereafter, the plaintiffs had filed I.A.No.1 of 2021 to scrap the commissioner's report on the ground that the suit schedule property is located only in Survey No.329/5. The Subdivisions have been erroneously made and therefore, the suit property is not located in Survey No.329/5C. Hence, the plaintiffs have prayed for scraping the commissioner's report which was based upon the suit Survey Number as 329/5C and to reissue the commissioner's report.

5.The plaintiffs also had filed I.A.No.2 of 2021 under Order 6 Rule 17 of C.P.C to amend the plaint so as to substitute Survey No.329/5 in place of 329/5C.

6.A perusal of the affidavit filed by the plaintiffs in I.A.No.2 of 2021 reveals that in the year 1969 without any knowledge and consent of the plaintiffs, the survey authorities have wrongly subdivided as R.S.No. 329/5 into R.S.Nos.329/5A, 329/5B and 329/5C without verifying the sale deed of the plaintiffs dated 08.09.1969 and without considering their possession and enjoyment. It is the further contention of the plaintiffs that they came to know about the subdivision only after the commissioner's report. Therefore, the plaintiff had prayed for amending the survey number



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in the plaint. As a consequence, the plaintiffs had prayed for scrapping the commissioner's report in I.A.No.1 of 2021.

7.The trial Court after considering the submissions made on either side had allowed the amendment of plaint on the ground that the said subdivisions have been carried out without acknowledge of the plaintiffs. As a consequence, the trial court also scrapped the commissioner's report which was based upon the original suit survey number. Challenging these two orders, the present civil revision petitions have been filed.

(B)Submission of the counsels:

8.According to the learned counsel for the revision petitioner/third defendant, the plaintiff had filed the suit contending that the suit survey number is only 329/5C. The plaintiffs have also filed the patta in the above said property along with the plaint. The said fact was also reiterated by this Court in CRP(MD).Nos.1313 to 1315 of 2016. Therefore, the plaintiffs cannot contend that they came to know about the subdivision only after the commissioner's report. He had further contended that the amendment of the survey number ignoring the subdivision of the property would completely alter the cause of action and it would cause



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great prejudice to the defendants. Hence, he prayed for allowing the revision petitions.

9.Per contra, the learned counsel appearing for the respondents/plaintiffs had contended that on 12.11.1996, at the instance of the defendants, the survey authorities have wrongly subdivided R.S.No. 329/5. This subdivision was made without issuing any notice to the plaintiffs. Only after the report of the commissioner, they were able to confirm the wrong classification and subdivision made in R.S.No.329/5. They wrongly mentioned their property as Survey No.329/5C in the plaint. He had further contended that the plaintiffs have already approached the Revenue Divisional Officer, Padmanabhapuram to rectify the error committed in the resurvey and to cancel the subdivision. In such circumstances, the plaintiffs should be permitted to amend the survey number in the plaint and as a consequence the commissioner's report shall be scraped. He had further contended that no prejudice would be caused to the defendants, if the order of the trial Court is sustained.

10.I have considered the submissions made on either side and perused the material records.



(C)Discussion:

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11.The suit was initially filed seeking declaration and permanent injunction for Survey No.329/5C. In paragraph No.5 of the plaint, the plaintiffs claim that they are the absolute owners of R.S.No.329/5C. Along with the plaint, as document No.13, the plaintiffs have produced a computer patta for R.S.No.329/5C. When the original plaintiff had died and the legal heir petition was dismissed by the trial Court, the plaintiffs had filed CRP(MD).Nos.1313 to 1315 of 2016 before this Court. This Court while allowing the revision petitions, had issued direction to appoint an Advocate Commissioner to localise the suit schedule property. Apart from the said direction, the Court has recorded that the plaintiff is making a claim over Survey No.329/5C and the defendants are making a claim over Survey No.329/5B. The plaintiffs were directed not to interfere with the defendants' right in respect of land comprised in Survey No.329/5B. The plaintiffs have not challenged the direction issued by this Court.

12.A perusal of the affidavit filed by the plaintiffs in I.A.No.2 of 2021 seeking amendment of the plaint reveals that the subdivision have been effected in the year 1996 itself and relying upon the subdivision, the plaintiffs' father has obtained patta and has filed the suit only for Resurvey



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No.329/5C. Even after the legal heirs of the original plaintiff had entered appearance, they had insisted that they are the owner of Resurvey No.329/5C only. When an Advocate Commissioner was appointed pursuant to the direction of this Court, the plaintiffs' counsel has served memo of instructions to him wherein as per Instruction No.4, the commissioner was requested to find out whether the plaint schedule property described in R.S.No.329/5C comes on the west of R.S.No.329/5B or not. After the commissioner had filed the report, these two applications have been filed by the plaintiffs as if they came to know about the subdivision only after the commissioner's report.

13.The trial Court merely believing the contention of the plaintiffs that the subdivision were effected behind their back, has proceeded to allow the amendment of plaint and has scraped the commissioner's report. The suit was filed in the year 2008 and till 2021, the plaintiffs are maintaining that they are the owners of R.S.No.329/5C. This fact was recorded and reiterated by this Court in CRP(MD).Nos.1313 to 1315 of 2016. Even thereafter, the plaintiffs' counsel has given a memo of instruction to the Advocate Commissioner to identify R.S.No.329/5C. Therefore, the contention of the plaintiffs that they came to know about



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this illegal subdivision only after the commissioner's report is highly unbelievable.

14.The suit is pending from the year 2008 onwards. The subdivision have so far not been cancelled in a manner known to law. This Court in CRP(MD).Nos.1313 to 1315 of 2016 has recorded the finding that R.S.No.329/5B belongs to the defendants. The plaintiffs have not chosen to challenge the same. In such circumstances, the plaintiffs cannot be permitted to contend that the entire R.S.No.329/5 belongs to the plaintiffs. The trial Court without properly considering the order of this Court in the above said revision petition, has proceeded to allow both the applications filed by the plaintiffs.

(D)Conclusion:

15.In view of the above said deliberations, the orders impugned in the civil revision petitions are not legally sustainable and they are liable to be set aside. Accordingly, both the impugned orders are set aside and the Civil Revision Petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.



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16.The trial Court is directed to dispose of the suit on or before
31.12.2025.

10.02.2025

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

1. The II Additional Munsif Court, Kuzhithurai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
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