



C.R.P.(MD)No.1379 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.07.2025

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CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P(PD)(MD)No.1379 of 2022

and

C.M.P(MD) No.5718 of 2022

1. Manikandan

2. Kumari

... Petitioners/Petitioners
Plaintiffs

Vs.

1. Antony

2. The Assistant General Manager,
NWPS, Opposite to Office of General Manager,
BSNL, Nagercoil,
Kanyakumari District.

3. The General Manager,
NWPS, BSNL, Nagercoil,
Kanyakumari District.

... Respondents/Respondents/
Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decreetal order in I.A.No.2 of 2020 in O.S.No. 133 of 2020, dated 31.03.2022 pending on the file of Additional District Munsif Court, Padbanabapuram, by allowing the Civil Revision Petition.

For Petitioners : Mr.G.Cenil

For R1 : Mr.C.Kishore

For R2 & R3 : Mr.K.Govindarajan



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Deputy Solicitor General of India

ORDER

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The petitioner is the plaintiff in O.s.No.133 of 2020 for mandatory injunction by directing the defendants to remove the portion of BSNL tower entered in the petitioner schedule property for permanent injunction. During the pendency of the suit, the petitioner filed I.A.no.2 of 2020 for appointment of an Advocate Commissioner under Order 26 Rule 9 of CPC and the same was dismissed. Challenging the same, the present Civil Revision Petition is filed.

The learned counsel for the petitioner would submit that admittedly, the petitioner purchased the suit property to an extent of 6 cents and 1777 sq.links in Survey No.154/13A2 at Village from one John vide sale deed dated 25.01.2018 vide document No.1333 on the file of the V..... Sub Registrar. After purchase, it reveals that the first defendant, who is the owner of the property in Survey no.154/13A3 and he leased out a portion of the property in favour of the second defendant BSNL. Both the first and second respondents encroached a portion of the property of the petitioner/plaintiff. Thereby he filed a suit, in which it is necessary to appoint an Advocate Commissioner to measure the property on the basis of the sale deed purchased by the petitioner and lease deed possessed by the first respondent. Though there is several prayers in the appointment of Advocate Commissioner petition, now the petitioner restricts his prayer only to note down the physical features of the property on the basis of



the sale deed produced by the petitioner and the first defendant with the help of a qualified Surveyor.

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The learned counsel for the first respondent submits that the petitioner filed the suit in O.S.No.56 of 2020 for permanent injunction from putting up aby and for consequential prayer for recovery of possession and also for mandatory injunction. When the suit is pending, the present is vexatious suit and the trial court has rightly appreciated all these issues and dismissed the application and the same need not be interfered.

The learned counsel for the second respondent submits that the second respondent has no serious objection for measuring the property on the basis of the sale deed on the basis of the sale deed possessed by the petitioner and the lease deed possessed by the BSNL.

He would further submits that prior to the purchase of the property by the petitioner from JJ the second respondent entered into a lease agreement with the first defendant/second defendant before the purchase of the property and he has no serious objection for measuring the property and for noting down the physical features of the property on the basis of the title deeds possessed by the first and second defendants.

This Civil Revision Petition is dismissed. The report of the Advocate



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Commissioner is only to help the Court to arrive at a definite conclusion. It is only a piece of evidence and it is not a conclusive proof. By measuring the property and noting the physical features of the property, no one will be prejudiced. Hence, this Civil Revision Petition is dismissed. The first and second defendants are at liberty to produce their sale deeds stood in their favour at the time of measuring the property by the Advocate Commissioner.

5. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

09.07.2025

Index : Yes/No
Internet : Yes / No
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To

1. The Additional District Munsif Court,
Padbanabapuram.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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