



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.1884 of 2023

and

C.M.P(MD) No.9451 of 2023

1. Azhagarsamy

Chellamuthu (Died)

2. Ponraj

3. Murugathal

4. Ponrasu

... Petitioners/Petitioners/
Respondents/Plaintiffs

Vs.

Natarajan

.... Respondent/Respondent
/Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and Ex order made in I.A.No.109 of 2021 in I.A.No.658 of 2016 in O.S.No.9 of 2016 on the file of the District Munsif Court, Oddanchatram, dated 10.04.2023.



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

For Petitioners : Mr.D.Venkatesh

For Respondent : Mr.R.Anandharaj

ORDER

The plaintiffs, in O.S.No.9 of 2016, on the file of the District Munsif Court, Oddanchatram, have filed the present Civil Revision Petition challenging the dismissal of their application for re-issuance of warrant to the same Commissioner to re-visit the property.

2. A perusal of the records reveal that the above said suit has been filed for the relief of declaration of title and permanent injunction. The defendant has also raised a counter claim for the relief of permanent injunction.

3. Pending suit, the defendant has filed I.A.No.658 of 2016 for the purpose of appointment of an Advocate Commissioner to note down the physical features of the property. A perusal of the Advocate Commissioner report reveals that the Commissioner had visited the property on 18.11.2017 and on 20.01.2019. Thereafter, the plaintiffs have paid batta for bringing the



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

Taluk Surveyor to assist the Advocate Commissioner. When the Advocate Commissioner visited the property on 05.10.2019, the plaintiffs and their counsel were not present. Therefore, the Advocate Commissioner has proceeded to file an interim report.

4. The plaintiffs had filed I.A.No.109 of 2021, seeking to re-issue the warrant to the same Advocate Commissioner on the ground that on 05.10.2019, he was waiting to bring the surveyor to the suit property. Before that, the Commissioner and other side have left the place. Unless, the Commissioner files a detailed final report, he would be put to great prejudice. This application was dismissed by the trial Court on the ground that the suit is for declaration of title and permanent injunction, the appointment of Advocate Commissioner is not necessary. Challenging the same, the present Civil Revision Petition has been filed.

5. According to the learned counsel appearing for the revision petitioners, the Commissioner has only filed an interim report, in view of the fact that the plaintiffs and their counsel were not available on 05.10.2019. In fact, on the same day they were waiting in the Taluk Office to bring the



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

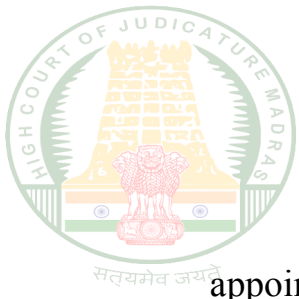
surveyor to the suit schedule property. In such circumstances, an opportunity should have been granted to the plaintiffs.

6. Per contra, the learned counsel appearing for the respondent herein pointed out that the suit is for declaration of title and for permanent injunction and therefore, the appointment of an Advocate Commissioner is not necessary.

7. Heard both sides and perused the materials available on record.

8. According to the learned counsel appearing for the revision petitioners/plaintiffs, there is a dispute with regard to the identity of the property. Only at the instance of the defendant an Advocate Commissioner was appointed and the Commissioner has filed only an interim report on the ground that the surveyor was not available on that date. In such circumstances, an opportunity should be granted to the plaintiffs.

9. When an application was filed for re-issuance of warrant to the same Commissioner, the Court cannot again consider the issue as to whether the



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

appointment of an Advocate Commissioner is necessary or not. The Court has already arrived at a finding that the appointment of an Advocate Commissioner is necessary. Now the only issue is whether the warrant has to be re-issued to the Commissioner or not. Considering the fact that on 05.10.2019, the surveyor could not be present, the plaintiffs should have been granted opportunity to survey the property with the help of the Taluk Surveyor.

10. Considering the above said facts, the order impugned in the revision petition is set aside and this Civil Revision Petition stands allowed. The Advocate Commissioner is directed to file his report on or before **30.04.2025**. Considering the fact that the suit is of the year 2016, the trial Court is directed to dispose of the suit in O.S.No.9 of 2016 on or before **31.12.2025**. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

17.03.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

5/7



C.R..P.(PD)(MD).No.1884 of 2023

WEB COPY

- To
1. The District Munsif Court,
Oddanchatram.
 2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R..P.(PD)(MD).No.1884 of 2023

R.VIJAYAKUMAR,J.

ebsi

C.R.P(PD)(MD)No.1884 of 2023

17.03.2025