



C.R.P.(MD)No. 2048 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2025

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CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.2048 of 2025

and

C.M.P.(MD)No.11844 of 2025

A.Saminathan

...Petitioner

Vs.

1.Balaji

2.Sathiyamoorthy

3.Arumugam

4.Sathiyagirinathan

5.Balasubramaniyan

6.Muthukumar

7.Alagu @ Nallaperumal

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to call for the records and set aside the docket order dated 27.06.2025 in I.A.No.1 of 2025 in O.S.No.17 of 2025, on the file of the Subordinate Court, Thirumayam and to allow the Civil Revision Petition.



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For Petitioner : Mr.A.Arun Prasad

For Respondent No.1 : Mr.B.Jameelarasu

ORDER

This petition has been filed seeking to set aside the docket order dated 27.06.2025 in I.A.No.1 of 2025 in O.S.No.17 of 2025, on the file of the Subordinate Court, Thirumayam

2.Learned Counsel for the petitioner would submit that the petitioner is the first defendant in O.S.No.17 of 2025, on the file of the Subordinate Court, Thirumayam. The said suit was filed by the first respondent / plaintiff for declaration to declare that the suit schedule property belongs to him and for consequential permanent injunction as against the respondents. When the suit was pending, the first respondent / plaintiff filed I.A.No.1 of 2025, under Order 26 Rule 9 of CPC, to note down the physical features and find out whether any temple is situated in the suit schedule property. The said I.A was allowed. Challenging the same, the present Civil Revision Petition has been filed.



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3.Learned Counsel for the petitioner would submit that there is no need for appointment of Advocate Commissioner to find out the physical features of the property. It is for the respondent to establish the title by adducing evidence and marking documents in a declaratory suit. In the present case, the petitioner claims that the patta stands in the name of his forefather Srinivasa Ravuth and on that basis he had instituted the suit. In a number of cases, it has been held that patta is not a document conferring title, it is primarily a record of possession and the same does not confer ownership by itself. If at all the respondent / plaintiff wants to establish the title, he has to produce the documents in the present case. However, no documents have been produced. Further, the respondent / plaintiff claims that Srinivas Ravuth is the forefather of the petitioner. In the absence of any legal heir certificate, any claim made by the petitioner itself is not maintainable in deciding the dispute in between the parties. Accordingly, he prays for appropriate orders.

4.Per contra, learned Counsel for the first respondent / plaintiff would submit that the petitioner is the first defendant and he claims that in the suit schedule property there is a Vinayagar Temple. On the said sole ground and in



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order to find out whether Vinayagar Temple is situated or not, it is the duty cast upon the respondent to file an application for appointment of Advocate Commissioner. The trial Court rightly allowed the said application. However, the CRP has been filed and an interim order has been obtained. If at all the petitioner has any grievance, he can very well file an objection petition to the Advocate Commissioner's report. It can be looked into at the time of trial. Accordingly, he prays for dismissal of the Civil Revision Petition.

5. Heard the learned Counsel on either side.

6. The facts in the present case are not in dispute. Admittedly, the first respondent / plaintiff filed a suit in O.S.No.17 of 2025, on the file of the Subordinate Court, Thirumayam, for declaration to declare that the suit schedule property belongs to him and for consequential permanent injunction as against the respondents. As rightly pointed out by the learned Counsel for the petitioner, in a declaratory suit, the trial Court has to decide the title on the basis of documents and pleadings, for which there is no necessity of appointment of Advocate Commissioner. The physical features noted by the Advocate Commissioner will not be useful for determining the title. In the present case, the order of appointment of Advocate Commissioner has been passed without



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any discussion by the trial Court, which is not a speaking order.

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7.On the aforesaid ground, this Civil Revision Petition stands allowed and the order passed in I.A.No.1 of 2025, is set aside. The trial Court is directed to scrap the Advocate Commissioner's report. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

13.08.2025

Internet:Yes/No

Index:Yes/No

MR



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To

1.The Subordinate Court,
Thirumayam.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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