



C.R.P(MD)No.1848 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 18.12.2024
DELIVERED ON : 23.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1848 of 2022
and
C.M.P(MD)No.8301 of 2022

- 1.Govindammal
- 2.Rajamani
- 3.Jegatha
- 4.Jothimurugan
- 5.Thirumurugan

... Petitioners

Vs.

- 1.Parvathi
- 2.Selvi
- 3.Solaiyammal
- 4.Subramani
- 5.Parameswari
- 6.Shanmugamoorthy
- 7.Chinnammal

1/8



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8.Subbiah

9.Kanagavalli

10.Velmurugan

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to pass an order setting aside the fair and executable order, dated 12.07.2022 passed in the application in I.A.No.109 of 2021 in O.S.No.2 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Kamuthi and allow the same and pass such other further orders as this Court.

For Petitioners : Mr.J.Barathan

For Respondents : Mr.A.Sivaji

ORDER

This Civil Revision Petition is preferred against the order passed in I.A.No.109 of 2021 in O.S.No.2 of 2019 on the file of the District Munsif cum Judicial Magistrate Court, Kamudi.

2. The revision petitioners as plaintiffs filed the above suit in O.S.No. 2 of 2019 for the following reliefs:

"A decree of declaration of title and for a consequential decree of permanent injunction restraining the respondents 1 to 9 from interfering with the peaceful possession and enjoyment of the suit properties; for a decree of declaration



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that the partition deed, dated 04.04.1959 bearing Document No.524 of 1959 on the file of the Sub Registrar, Kamuthi had been registered by fraud and impersonation; for a decree of declaration that the settlement deed, dated 16.04.1959 bearing Document No.525 of 1959 on the file of the Sub Registrar, Kamuthi had been registered by fraud and impersonation; for a decree of declaration that the settlement deed, dated 16.04.1959 bearing Document No.1438 of 1959 on the file of the Sub Registrar, Kamuthi had been registered by fraud; for a decree of declaration that the settlement deed, dated 10.12.1980 bearing Document No.2018 of 1980 on the file of the Sub Registrar, Kamuthi had been registered by fraud; for a decree of declaration that the settlement deed, dated 27.06.2011 bearing Document No.921 of 2011 on the file of the Sub Registrar, Kamuthi had been registered by fraud; for a decree of declaration that the settlement deed, dated 18.08.2011 bearing Document No.1218 of 2011 on the file of the Sub Registrar, Kamuthi had been registered by fraud; for a decree of declaration that the settlement deed, dated 18.08.2011 bearing Document No.1219 of 2011 on the file of the Sub Registrar, Kamuthi had been registered by fraud; for a decree of declaration that the settlement deed, dated 09.01.2018 bearing Document No.24 of 2018 on the file of the Sub Registrar, Kamuthi had been registered by fraud and for costs."



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3. According to the revision petitioners, the defendants 1, 6 and 8 filed their written statement denying the averments made in the plaint. Pending suit, the defendants have filed an application in I.A.No.109 of 2021 for appointment of Advocate Commissioner to inspect the suit properties and note down its physical features. In spite of the objections made by the revision petitioners, the Trial Court allowed the said application. Aggrieved by this, the present revision petition is preferred.

4. The learned Counsel appearing for the revision petitioners submits that an Advocate Commissioner cannot be appointed to find out the possession of the suit properties and the intention of the respondents / defendants is only to collect evidence. Since there is no dispute with regard to identity, the need for appointing an Advocate Commissioner does not arise. Hence, the impugned order passed by the Trial Court requires consideration by this Court.

5. On the other hand, the learned Counsel appearing for the respondents / defendants would submit that in order to establish the case of the defendants, it is necessary to note down the physical features of the suit



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property and measure the same with the help of surveyor. The Trial Court has rightly allowed the said application which calls for no interference by this Court. The learned Counsel would further contended that in a suit, where local investigation is required for the purpose of elucidating any matter in dispute, the Court may issue a Commission to make such investigation and to report to the Court which will be helpful for the Court to arrive at a correct decision.

6. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents and perused the materials available on record.

7. Admittedly, the revision petitioners have filed the suit for declaration of title and for permanent injunction. It is the specific case of the revision petitioners / plaintiffs that one Thangavel Chettiar had fraudulently created a partition deed on 04.04.1959 and also fabricated the settlement deeds, dated 16.04.1959 and 15.06.1959 and that the said Thangavel committed the said fraud by impersonation "that the signature of Ramasamy Chettiyar was forged". While so, there is no plea on either side regarding any dispute as to the identity of the suit properties. Even in the support



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affidavit filed by the respondents / defendants, nothing is stated about the identity of the suit properties. Therefore, in the absence of any *prima facie* case, there is no point in granting the application for appointment of Advocate Commissioner and the Advocate Commissioner cannot be appointed to collect evidence.

8. In these circumstances, the impugned order which has the effect of collecting evidence by the Advocate Commissioner is un-sustainable and is required to be set aside and accordingly, set aside.

9. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.01.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

The District Munsif cum Judicial Magistrate Court,
Kamuthi.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
C.R.P(MD)No.1848 of 2022

23.01.2025