



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.[PD](MD)No.2008 of 2021

and

C.M.P.(MD)No.10788 of 2021

1.KL.Karuppiah Chettiar (Died)

2.Saravanan Palaniappan

3.Theivanai

4.Shantha

5.Deivanai

..Petitioners

(petitioner Nos.3 to 5 herein are legal representatives of the deceased Karuppiah Chettiar)

Vs.

1.G.Chokkalingam

2.G.Cholai

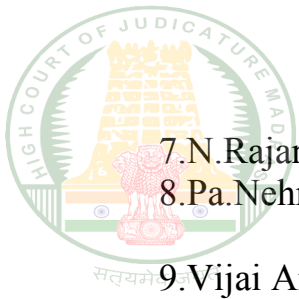
3.L.Ganesh

4.L.Nagarajan

5.AT.Lakshmanan

(For himself and as Power of Attorney Agent of Respondent Nos.1 to 4 herein)

6.AT.Ganesan Chettiar



7.N.Rajaram Chettiar

8.Pa.Nehru

9.Vijai Anand

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...Respondents

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PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to call for the records relating to the impugned docket order dated 13.03.2020 made in IA.No.2 of 2019 in O.S.No.124 of 2019 on the file of the Sub Court, Devakottai and set aside the same and allow this Civil Revision Petition.

For Petitioners : Mr.S.Meenakshi Sundaram,
Senior Counsel
for Mr.B.Muruganandam

For R-1 to R-5 : Mr.R.Sundar Srinivasan

For R-6 to R-9 : No Appearance

ORDER

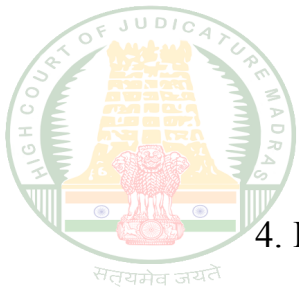
This Civil Revision Petition has been filed seeking orders to set aside the impugned docket order dated 13.03.2020 made in I.A.No.2 of 2019 in O.S.No. 124 of 2019 on the file of the Sub Court, Devakottai.

2. The first petitioner is the first defendant, and the second petitioner is the fifth defendant in O.S.No.124 of 2019. Petitioners 3 to 5 are the legal heirs



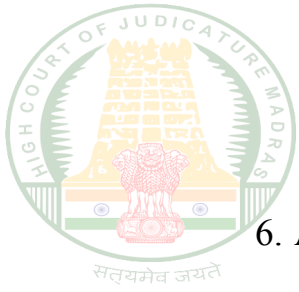
of the deceased first petitioner. Respondents 1 to 5 are the plaintiffs, and respondents 6 to 9 are defendants 2, 3, 4, and 6 in the said suit. The respondents 1 to 5 filed the suit in O.S.No.124 of 2019 before the Sub Court, Devakottai, seeking declaration of title over the suit schedule properties. During the pendency of the suit, the respondent Nos.1 to 5 filed an interlocutory application in I.A.No.2 of 2019 under Order XXVI Rule 9 CPC before the trial Court for the appointment of an Advocate Commissioner to note down the physical features of the suit property and to measure the same with the help of a qualified surveyor. The said application was allowed by the Trial Court on 13.03.2020. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3. The learned Senior Counsel appearing for the petitioners would submit that the suit filed by the respondent Nos.1 to 5 is only for declaration of title, without any consequential relief such as recovery of possession or injunction. It was further submitted that there is no dispute between the parties regarding the identity or measurement of the suit property. Therefore, in the absence of any such dispute, the appointment of an Advocate Commissioner is unnecessary and unwarranted. He further contended that respondent Nos.1 to 5 have no document of title or patta for possession. Hence, no survey and measurement can be made in the absence of title deed or patta in favour of respondent Nos.1 to 5. Accordingly, the order of the trial Court is liable to be set aside.



4. Per contra, the learned counsel appearing for the respondent Nos.1 to 5 would submit that the appointment of an Advocate Commissioner to measure the suit property and note down its physical features with the help of a qualified surveyor would help the trial Court in effectively adjudicating the dispute. It was also submitted that no prejudice would be caused to the petitioners by such appointment, and therefore the order of the trial Court does not warrant interference.

5. Upon consideration of the submissions and perusal of the records, it is an admitted fact that the respondent Nos.1 to 5 have filed a suit seeking declaration of title over the suit properties without any prayer for consequential relief of recovery of possession or injunction. It is also not in dispute that the identity and measurement of the suit property are not contested between the parties. In such circumstances, where there is no controversy as to the boundaries or measurement of the suit property, the appointment of an Advocate Commissioner merely to record physical features is unwarranted. The respondent Nos.1 to 5 must establish their title by adducing appropriate oral and documentary evidence before the Trial Court. The appointment of an Advocate Commissioner in the absence of any boundary or identification dispute is not sustainable.



6. Accordingly, the impugned order dated 13.03.2020 passed in I.A.No.2 of 2019 in O.S.No.124 of 2019 by the learned Sub Judge, Devakottai, is set aside.

7. In the result, the Civil Revision Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

24.06.2025

Internet: Yes/No

Index: Yes/No

TSG

To

1.The Sub Court, Devakottai.

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



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M.DHANDAPANI, J.

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