

C.R.P.(MD)No.2185 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P(PD)(MD)No.2185 of 2025

and

CMP (MD) No.12897 of 2025

K.Sivakumar

... Petitioner(s)

Vs.

P.Velusamy

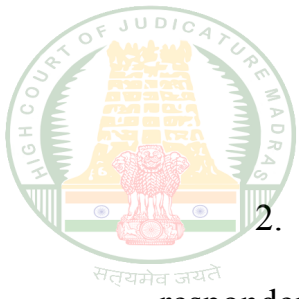
... Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2025 in O.S.No.44 of 2017 on the file of the District Munsif cum Judicial Magistrate No.1, Kodaikanal, Dindigul District, dated 08.07.2025 and to allow the Civil Revision Petition.

For Petitioner : Mr.C.Vakeeswaran

ORDER

This Civil Revision Petition is filed seeking a direction to set aside the fair and decreetal order passed in I.A.No.1 of 2025 in O.S.No.44 of 2017 on the file of the District Munsif cum Judicial Magistrate No.1, Kodaikanal, Dindigul District, dated 08.07.2025 and to allow the Civil Revision Petition.



2. Since no adverse order is going to be passed as against the respondents, notice to them is dispensed with.

3.The petitioner is the defendant in O.S.No.44 of 2017 in which the plaintiff/respondent filed I.A.No.1 of 2025 under Order XXVI Rule 9 of the Code of Civil Procedure, seeking the appointment of Advocate Commissioner to carry out local inspection to file a report. The trial Court allowed the application. Challenging the same, the present civil revision petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the respondent is the second husband of one Desiammal. The said Desiammal was previously married to one Natarajan Manandi and during that marriage, she instituted a partition suit in O.S.No.539 of 1978, through which her share was determined as 1 acre 90 cents of lands comprised in S.No.72/3 and 72/4 in Pachaloor Village. Thereafter, Desiammal married the respondent/plaintiff. During her life time, Desiammal alienated 1 acre 36 cents of land in favour of one Arumugam. Subsequently, the respondent/plaintiff, as her second husband, instituted a suit as against the petitioner seeking declaration of title, recovery of possession and an injunction. Pending the suit, he filed an interlocutory application seeking appointment of Advocate Commissioner to conduct a local



inspection to ascertain whether any thorn fencing structure had been removed.

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5. It is the petitioner's case that the brother's son of Desiammal interfered with the petitioner's possession over 54 cents of land and removed the thorn fencing structure. To ascertain the alleged removal of thorn fencing, the respondent/plaintiff filed I.A.No.1 of 2025 under Order XXVI Rule 9 of the Code of Civil Procedure, seeking the appointment of Advocate Commissioner. The trial Court allowed said application, which according to the petitioner is not sustainable.

6. The petitioner argues that even in the earlier partition suit, the delivery proceedings clearly indicate that possession was delivered only with respect to 1 acre 36 cents not the full 1 acre 90 cents claim. Therefore, the respondent/plaintiff's claim over the remaining 54 cents is not maintainable. Since the said 54 cents is not physically available, appointing an Advocate commissioner to determine the removal of the thorn fencing is not justified. Accordingly, he prays to allow the present revision petition.

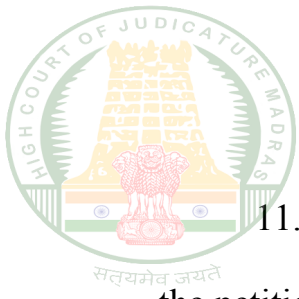
7. Heard the learned counsel for the revision petitioner and perused the materials available on record.



8. The facts in the present case are not disputed. Admittedly, the respondent/plaintiff is the second husband of Desiammal. Desiammal was allotted a share of 1 acre 90 cents under the partition deed. However, the petitioner contends that the possession was delivered only in respect of 1 acre 36 cents and not the entire extent of 1 acre 90 cents, as claimed by the respondent/plaintiff.

9. The respondent/plaintiff, on the other hand, claimed that 54 cents of land was in his occupation and that the petitioner removed the thorn fencing on the said portion. In order to ascertain whether the thorn fence was indeed removed, he filed I.A.No.1 of 2025 seeking the appointment of Advocate Commissioner.

10. It is well settled that the Advocate Commissioner's report is merely a piece of evidence in determining the issues between the parties and does not constitute conclusive proof. Even upon submission of the report, the petitioner is entitled to file objections before the trial Court. Instead of availing this remedy, the petitioner has chosen to file the present revision petition, which is not maintainable.



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11. Accordingly, the civil revision petition stands dismissed. However, the petitioner is at liberty to file objections to the commissioner's before the trial Court, if the report is contrary to his interests. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

06.08.2025

Index : Yes/No
Internet : Yes / No
PKN

To

1.The District Munsif cum Judicial Magistrate No.1,
Kodaikanal, Dindigul District.

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



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M.DHANDAPANI,J.

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