



CRP (PD) (MD).No.3082 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

CRP (PD) (MD).No.3082 of 2024

and

CMP.(MD).No.17558 of 2024

1.K.Jaheer Usain

2.J.Shaila Banu @ Shahila Banu .. Petitioner/Respondents/Plaintiffs

Vs.

M.Samidurai

.. Respondents/Petitioner/Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order and decretal orders in IA No. 1 of 2023 in O.S.No.250 of 2023 dated 09.08.2024 by the learned Additional Sub Court, Palani.

For Petitioners : Mr.K.Muthu Ganesa Pandian

For Respondent : Mr.N.Mohan



CRP (PD) (MD).No.3082 of 2024

ORDER

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The plaintiff in O.S.No.250 of 2023 on the file of Additional Sub Court, Palani has filed the present revision petition, challenging the appointment of an Advocate Commissioner at the instance of the defendant.

2. A perusal of the records reveal that the petitioners herein have filed the above said suit for the relief of declaration of title and permanent injunction. The first item of property is shown as survey No. 629/3A having an extent of 49 cents. The second item property is shown as survey No.629/3B having an extent of 47 cents.

3. As per the averments in the plaint, the suit schedule properties originally belonged to one Marikudumban and after his death, his wife Kailasham and two sons viz., Maruthail Kudumban and Veluchamy have entered into a registered partition deed under document No.2923 of 1963. Under the said document the properties that were allotted in favour of Kailasham was, purchased by the defendant. The share of Maruthai Kudumban was purchased by the plaintiffs. It is the further contention of the plaintiffs that the total extent of S.No.629/3 is only 1.41 acres, in which the plaintiffs claim right title and possession over 96 cents.



CRP (PD) (MD).No.3082 of 2024

WEB COPY

4. Pending suit, the defendant have filed I.A.No.1/2023 contending that the total extent of survey No.629/3 is not 1.41 acres but it is 1.62 acres and therefore, they wanted an Advocate Commissioner to be appointed to find out the physical features of the property and to measure the suit schedule property with the help of a surveyor. This application came to be allowed by the trial Court on the ground that this will help in reducing the oral and documentary evidence, which is under challenge.

5. According to the learned counsel appearing for the petitioner, even as per the registered partition deed, survey no.629/3 is having only 1.41 acres. The defendant is claiming 1.62 acres which is contrary to their parent document. Therefore, appointment of an Advocate Commissioner is not necessary.

6. *Per-contra*, the learned counsel appearing for the respondent/defendant had contended that the actual extent as per “LIE” is more than 1.62 acres and therefore, the measurement of the entire survey No.629/3 would be helpful for proper adjudication of the case.

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



CRP (PD) (MD).No.3082 of 2024

WEB COPY

8. The plaintiffs specifically contends that survey no.629/3 consists only 1.41 acres. On the other hand, the defendant contends that there is an extent of more than 1.62 acres. For the above said reason, unless an Advocate Commissioner is appointed for measurement of the suit schedule property with the help of surveyor, this dispute cannot be resolved.

9. In such circumstances, the order passed by the trial Court cannot be found fault with and there are no merits in this revision petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2025

NCC : Yes/No

Index : Yes/No

Internet : Yes

nst

To:
The Additional Sub Judge,
Palani.



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R.VIJAYAKUMAR,J.

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