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CRP NO.413 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 12 / 11 / 2025

ORDER PRONOUNCED ON : 23 / 01 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CIVIL REVISION PETITION NO.413 OF 2022ANDCIVIL MISCELLANEOUS PETITION NO.2120 OF 2022

1. Thavamani,

2. Selvamani,

Both the Petitioners are residing at
 Erikodipatti Village, Ilaligam Post,
 Dharmapuri Taluk and District.

...

Petitioners /
 Petitioners /
 Plaintiffs

Versus

T. Jayamani

Erikodipatti Village,

Ilaligam Post,

Dharmapuri Taluk and District.

...

Respondent /
 Respondent /
 Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950 praying to set aside the fair and decreetal Order dated September 4, 2021 passed in I.A.No.255 of 2020 in O.S. No.148 of 2014 by the learned District Munsif, Dharmapuri and allow the said Interlocutory Application filed by the petitioners.

For Petitioners : Mr.A.Arun Anbumani

For Respondent : Notice Served – No appearance



ORDER

The revision petitioner filed I.A. No.255 of 2020 in O.S. No.148 of 2014, under Order XXVI Rule 9 read with Section 151 of “the Code of Civil Procedure, 1908” (“CPC” for short) praying to order for the Advocate Commissioner's revisit to the suit schedule property and to measure the suit schedule property with the help of surveyor with reference to the defendant's sale deed. The same was dismissed by 'the District Munsif Court, Dharmapuri' ['Trial Court'] vide Order dated September 4, 2021. Feeling aggrieved by the dismissal, the present revision petition has been filed under Article 227 of Constitution of India, 1950 praying to set aside the same and allow the Interlocutory Application.

2. For the sake of convenience, the parties are hereinafter referred to as per their array in the Original Suit.

3. The case of the plaintiffs is that an extent of 84 cents in S.No.391/1 in Erikodipatti Village and another extent of property in S.No.390/2, was originally owned by Marimuthuammal W/o. Ramasamy. Original owner Marimuthuammal died leaving behind her daughter Pachiammal. The said Pachiammal married one Marimuthu, out of their



wedlock, no child was born. So, the said Marimuthu married one

WEB COPY Kaveriammal as 2nd wife through whom the plaintiffs Mr.Thavamani and Mr.Selvamani were born. The father of the plaintiffs Mr.Marimuthu died

in the year 2006 and his 1st wife Pachiammal also died in the year 2013. At this stage, the plaintiffs are the only legal heirs of the deceased. The original owner Pachiammal during her life time executed a Sale Deed in respect of an extent of 10 cents in S.No.391/1b in the year 1998 to one Devarajan. Thereafter, the said Pachiammal executed another sale deed in favour of the defendant for an extent of 5 cents in the same survey number. The case of the plaintiffs is that the defendant has encroached the suit schedule property beyond the 5 cents of land sold to him. Hence, the plaintiffs filed the suit in O.S. No.148 of 2014 before the Trial Court seeking for declaration, recovery of possession and mandatory injunction against the defendant in respect of the Suit schedule mentioned property.

4. The plaintiffs filed an application under Order XXVI Rule 9 read with and Section 151 of CPC, seeking to appoint an Advocate Commissioner to inspect and measure the suit property along with the help of surveyor in I.A.No.1426 of 2017 and the same was allowed vide order dated February 22, 2018. As per the aforesaid order of the Trial Court, the



Advocate commissioner inspected the suit schedule property along with the help of surveyor and Village Administrative Officer and filed his reports along with plan which were marked as Ex.C1 and Ex.C2 wherein there is no information about the encroachment made by the defendant. After commencement of the Trial, the Interlocutory application in I.A. No.254 of 2020 filed by the plaintiffs for condonation of delay in filing the objections to the said report was allowed subject to payment of costs of Rs.1,000/-, the Interlocutory application in I.A. No.255 of 2020 filed by the plaintiffs seeking to revisit the suit schedule property was dismissed, vide order dated September 4, 2021.

5. Feeling aggrieved by the said order dated September 4, 2021 passed in I.A. No.255 of 2020, the plaintiffs who are the petitioners therein have come up with this Civil Revision Petition. The grievance of the plaintiffs is that the Advocate Commissioner did not measure the suit property with reference to the Sale deed of the defendant and failed to identify the encroachments. The Advocate Commissioner simply noted down the physical features and measured the existing sale measurement.

6. Mr. A. Arun Anbumani, learned counsel appearing for the Revision petitioner would submit that the Advocate Commissioner ought to have



measured the suit property with reference to the measurement stated in the defendant's sale deed. Then only the plaintiffs will be able to establish that the defendant has encroached the suit property beyond the five cents that were sold to him. Further, the Surveyor did not identify and measure the defendant's property and give any plan. Hence, re-visit and re-measurement of the suit property is absolutely necessary for the Trial Court to decide the dispute between the parties. No prejudice would be caused to other side if the petition is allowed. The Trial Court without appreciating the facts and circumstances of the case, dismissed the I.A. No.255 of 2020. Hence he would pray to allow the Revision petition by setting aside the order of the Trial Court made in I.A. No.255 of 2020 and consequently allow the Interlocutory Application I.A.No.255 of 2020.

7. Despite service of notice, the respondent did not appear before this Court.

8.This Court has perused the copy of the sale deed dated February 29, 1964 which stands in the name of Marimuthuammal who is the predecessor in title of the plaintiffs. The aforesaid Marimuthuammal purchased an extent of 84 cents in S.No.391/1 and another extent of 16 cents in S.No.390/2, both in Erikodipatti Village vide the said Sale Deed. Admittedly, at a later point of time, the plaintiffs along with their



predecessors in title sold an extent of 10 cents to one Devarajan and sold another extent of 5 cents to the defendant within specific four boundaries.

Admittedly, the defendant's property is on the north eastern side of S.No.391. Abutting the Northern boundary of the defendant's property, there is a East-West Road and similarly, abutting the eastern boundary, there is a North South Road. Hence, there may not be any difficulty to identify and measure the defendant's property. Upon such measurement, any encroachments by the defendant could be easily identified. Any extent more than 5 Cents in the possession of the defendant would be an encroachment. Hence, though the trial has commenced, revisit of the suit property by the Advocate Commissioner along with a surveyor is necessary to decide the dispute between the parties.

9. In view of the aforesaid observations and discussions, this Court is inclined to accept the submissions made by the learned counsel appearing for the Revision petitioner. The plaintiffs are directed to furnish a certified copy of the sale deed executed in favour of the defendant before the Trial Court within 15 days from the date of receipt of a copy of this Order. Upon receiving the certified copy, the Trial Court is directed to reissue warrant to the same Advocate Commissioner with a direction to inspect and measure the defendant's property along with a qualified



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surveyor as per the aforesaid sale deed and find out the encroachments if any and to file his report along with surveyor's plan as early as possible.

The Trial Court is at liberty to issue any other directions it deems fit.

10. In the result, this Civil Revision Petition is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

23 / 01 / 2026

Index : Yes
Speaking order : Yes
Neutral Citation : Yes
LBM/TK

R.SAKTHIVEL, J.

lbm/tk

To

The District Munsif
Dharmapuri.



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PRE-DELIVERY ORDER MADE IN
C.R.P. NO.413 OF 2022

23 / 01 / 2026