



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 2455 of 2024

1. K. Thangaraj
S/o. Kalidas,
D.No.83/46, Vegetable Market Street,
Karungalpatty Main Road, No.4,
Karungalpatty, Gugai, Salem – 006.
2. K. Dhanakotti
S/o. Kalidas,
D.No.83/46, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem - 006.

..Petitioner(s)

Vs

1. R. Palthurai
S/o. Ramanadar,
D.No.84, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem – 006.
2. R. Dharmaraj
S/o. Ramanadar,
D.No.84, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem- 006.
3. R. Murugaraj
S/o. Ramanadar,
D.No.84, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem- 006.



4. R. Kanagaraj
S/o. Ramanadar,
D.No.84, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem- 006.

5. R. Arumugaraj
S/o. Ramanadar,
D.No.84, Vegetable Market Street,
Karungalpatty Main Road No.4, Karungalpatty,
Gugai, Salem- 006.

..Respondent(s)

PRAYER

Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the fair and decreetal order dated 03.04.2024 passed in IA No.1 of 2023 in OS No.301 of 2019 on the file of the II Additional District Munsif Court at Salem.

For Petitioner(s): Mr.S.Ramajayam

For Respondent(s): R1 - Not Claimed
R-2 To R5 - No Appearance

ORDER

Aggrieved over the impugned order passed in IA No.1 of 2023 in OS No.301 of 2019 by the II Additional District Munsif Court, Salem, the Revision Petitioners/plaintiffs have preferred this Civil Revision Petition.

2. Before the trial court, the Revision Petitioners filed the suit in O.S.No.301 of 2019 against the defendants 1 to 5 for the relief of declaration and other consequential relief in respect of 'A' and 'B' schedule properties and he sought for the relief in respect of 'B' schedule property, wherein the common



passage was shown as 4 feet. But, in the written statement filed by the respondents/defendants, they have pleaded that pathway is only 2 $\frac{3}{4}$ feet and not 4 feet. However, as per the partition deed of the year 1979, the common pathway is shown as 3 feet. With regard to the passage length and breadth, there is a dispute. Therefore, the revision petitioners/plaintiffs have filed the application to appoint an Advocate Commissioner to measure the property with the help of Surveyor and to note down the physical features, but the said application was dismissed by the trial judge holding that the report of Advocate Commissioner cannot be used as collection of evidence and the extent claimed by the plaintiffs also more than the extent as mentioned in the document. Therefore, the appointment of Advocate Commissioner is not necessary. Accordingly, it was dismissed. Aggrieved over that, this Civil Revision Petition has been filed.

3.The learned counsel for revision petitioners/plaintiffs had pointed out that to avail the relief of declaration in respect of 'B' schedule property and the measurement of common passage, the appointment of Advocate Commissioner is just and necessary. He would submit that though there is a written statement as well as title deed, as on date, the extent on ground is the dispute, so, to establish the same, they wanted to appoint an Advocate Commissioner, but the trial court failed to consider the same and erroneously dismissed the said application. Hence, he prayed to set aside the findings of trial judge.



4. Despite service of notice and the name of respondents were also printed in the cause list, there is no representation on the side of respondents.

5. On perusal of records, the fact reveals that in respect of 'B' schedule property, the revision petitioners/plaintiffs claimed the relief of declaration and it is 4 feet common pathway. But, the respondents/defendants contended in their written statement that it is 2 ³/₄ feet, however, in the partition deed, it was shown as 3 feet. Therefore, with regard to variation of common passage, the measurement of property by the Advocate Commissioner, as on date is required. But, the court below failed to appreciate the same. Therefore, this Court is inclined to set aside the findings rendered in I.A.No.1 of 2023 in O.S.No. 301 of 2019 on the file of II Additional District Munsif, Salem and the application filed in I.A.No.1 of 2023 is allowed. The trial judge is directed to appoint an Advocate Commissioner to measure the property within a period of four weeks from the date of receipt of copy of this order. Thereafter, he is also directed to proceed with the matter by giving opportunity to both parties. Accordingly, this Civil Revision Petition is allowed. No costs.

15-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

RPP
To
The Additional District Munsif Court, Salem.



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CRP No. 2455 of 2



T.V.THAMILSELVI J.

RPP

CRP No. 2455 of 2024

15-04-2026