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C.R.P.No.6409 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.6409 of 2025

1.Nanda Kumar

2.Jayanthi

... Petitioners

vs.

Narayanasamy

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decree passed in I.A.No.2 of 2023 in O.S.No.517 of 2023 dated 30.04.2025 by the II Additional District and Sessions Judge, Tiruppur.

For Petitioners : Mr.C.Ravichandran

For Respondent : M/s.S.Ambika
for M/s.K.Venkateswaran

ORDER

The Civil Revision Petition is filed challenging the order passed by the II Additional District and Sessions Judge, Tiruppur in I.A.No.2 of 2023 in O.S.No.517 of 2023, dated 30.04.2025 dismissing the application filed by



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the petitioners seeking appointment of Advocate Commissioner to note down the physical features and measure the suit property with the help of Taluk Surveyor and to file a detailed report.

2. The petitioners herein filed a suit for declaration that they are the absolute owners of the suit property and for consequential injunction restraining the defendant from interfering with their alleged possession over the suit property. They also sought for a declaration that Partition Deed dated 04.03.1983 entered with the defendants' family was null and void.

3. Pending suit, the instant application has been filed by the petitioners seeking measurement of the suit property by the Advocate Commissioner and the said application was dismissed by the Trial Court. Aggrieved by the same, the petitioners have come before this Court.

4. The learned counsel appearing for the petitioners would submit that the petitioners are claiming right over portion of the property situated in Survey No.517/1 with four boundaries. Therefore, to locate the said property, the Trial Court ought to have appointed the Advocate Commissioner.



5. It is seen from the pleadings that the petitioners claiming right over the suit property under Sale Deed dated 20.10.1989 and Settlement Deed dated 07.06.2011. It is the specific case of the petitioners that the 1st petitioner purchased the 'A' schedule property from Bakthavathchalam, who purchased the property from original owner Vijayaragavan. The 2nd petitioner got the 'B' schedule property under Settlement Deed executed by the said Vijayaragavan. It is further stated that the property was originally allotted to share of the Vijayaragavan's father-Venkatasamy Naidu under Partition Deed dated 07.12.1937 and after death of Venkatasamy Naidu, there was a partition in the family on 20.09.1955, whereunder the suit properties were allotted to the share of Vijayaragavan.

6. The respondent filed counter denying the case of the petitioners that the suit properties were allotted to the share of Venkatasamy Naidu in the 1937 partition. Therefore, the title of the petitioners' predecessor-in-interest has been disputed by the respondent in the written statement.

7. The suit is for declaration of title and permanent injunction. The petitioners/plaintiffs have to establish their title and possession by leading oral and documentary evidence and they cannot prove their title and



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possession by appointment of Advocate Commissioner for local inspection.

In the pleadings of the parties, there is no controversy with regard to the location of the suit property. In the absence of any controversy with regard to the identity and location of the suit property, the appointment of Advocate Commissioner to measure the suit property is not at all necessary and the rights of the parties have to be decided based on the documents to be filed by them. Therefore, the Trial Court rightly dismissed the application and I do not find any error in the impugned order passed by the II Additional District and Sessions Judge, Tiruppur in I.A.No.2 of 2023 in O.S.No.517 of 2023, dated 30.04.2025.

8. The learned counsel appearing for the petitioners would submit that the Trial Court while dismissing the application made certain observation regarding the title of the plaintiffs and the same will affect their right at the time of final disposal.

9. Any observation made by the Trial Court in an interlocutory application is only a *prima facie* finding and the same is not binding on the Court at the time of final disposal. Therefore, it is made clear the parties are at liberty to advance their arguments at the time of final disposal and the



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same shall be considered by the Trial Court on it's own merits independently, without reference to any observation made in this order or in the order impugned in this revision.

10. With the above clarification, the Civil Revision Petition is dismissed. No costs.

05.02.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The II Additional District and Sessions Judge,
Tiruppur.



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S.SOUNTHAR, J.

dm

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