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C.R.P.(PD)NO.2948 OF 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 31 / 10 / 2025

ORDER DELIVERED ON: 28/ 11 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(PD)NO.2948 OF 2021
AND C.M.P.NO.21117 OF 2021

1.Umavathi

D/o.Late K.C.Kenchappa @ Chinna Kenchappa

2.Ramachandran

S/o.Late K.C.Kenchappa @ Chinna Kenchappa

3.Lakshmipathi

S/o.Late K.C.Kenchappa @ Chinna Kenchappa

4.Maramma

D/o.Late.Kempaiah

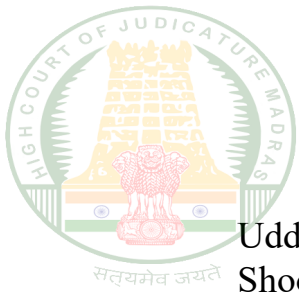
All are residing at
Keeranapalli Village,
Samanapalli Post,
Shoolagiri Taluk,
Krishnagiri District.

... Petitioners/Petitioners/
Plaintiffs

Vs.

1.Seekamma @ Mallamma

D/o.Late.Mallappa,
Kannasandra Village,



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Uddanapalli Post,
Shoolagiri Taluk,
Krishnagiri District.

2.Basamma
W/o.Rajendra Achari,
Venkateshpuram Village,
Uddanapalli Post,
Shoolagiri Taluk,
Krishnagiri District.

...Respondents/Respondents
Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decreetal Order dated November 10, 2021 passed in I.A.No.178 of 2018 in O.S.No.61 of 2018 on the file of the Principal Subordinate Court, Hosur.

For Petitioners	:	Ms.Pavithra for Mr.R.Jayaprakash
For Respondents	:	Mr.Selvakumar

ORDER

Feeling aggrieved by the Dismissal Order passed in I.A.No.178 of 2018 in O.S.No.61 of 2018 on the file of 'Principal Subordinate Court at Hosur' (hereinafter referred to as the 'Trial Court'), the Petitioners/Plaintiffs therein have filed this Civil Revision Petition.



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2. The Revision Petitioners herein are the Plaintiffs and the Respondents herein are the Defendants in the Original Suit. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. The plaintiffs filed the Suit in O.S.No.61 of 2018 against the defendants seeking declaration of title, delivery of possession, permanent injunction and declaration of Sale Deeds dated May 04, 2007 and June 17, 2010 as null and void. An extent of 48 cents within four specified boundaries in Survey No.59/1 (new Survey No.59/1B) is the Suit Property.

4. The case of the plaintiffs is that one Kempaiah son of Nanje Gowdu and one Poojari Kempaiah son of Siddanna are friends. They both were residing in Venkateshpuram Village, Hosur Taluk. On April 06, 1971, both Kempaiah and Poojari Kempaiah jointly purchased an extent of 1.83 acres in Survey No.59/1 of Agaram Agraharam Village from A.Venkateshachar and A.Krishnamachar vide registered Sale Deed dated April 06, 1971 and they were in possession and enjoyment of the said land. During the lifetime of Kempaiah and Poojari Kempaiah, there



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was an Oral Panchayat Partition effected between them in respect of land purchased by them. In the Oral Panchayat Partition, the aforesaid entire extent of 1.83 acres was divided into two equal shares and was allotted between them (each 91 ½ cents).

4.1.While being so, Kempaiah passed away on January 05, 1992 leaving behind one son and one daughter, namely K.C.Kenchappa @ Chinna Kenchappa and Maramma (Fourth Plaintiff) as his legal heirs to succeed his estate. Thereafter, K.C.Kenchappa @ Chinna Kenchappa passed away on December 08, 2004 leaving behind the Plaintiffs 1 to 3 as his legal heirs to succeed his estate.

4.2.As far as the 91 ½ cents allotted to Poojari Kempaiah is concerned, he died leaving behind his only daughter, namely, Chennamma as his legal heir to succeed his estate. Chennamma has two sons and one daughter, namely Periya Mallappa, Chinna Mallappa and Sellapuriyamma. Chennamma executed a Gift Deed in respect of 91 ½ cents which she inherited from her father, in favour of her daughter Sellapuriyamma vide Gift Deed dated December 10, 1987.



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4.3. According to the Plaintiffs, one Mallappa son of Ella Mallappa, who is a stranger to the family of Poojari Kempaiah and Kempaiah with an intention to knock away the Suit Property, purposely misled the Revenue Authorities by including his name as a Joint Pattadhar in Patta No.147. During the UDR Survey, UDR Patta has been granted in the name of K.C.Kenchappa son of Late Kempaiah, Mallappa son of Ella Mallappa, Chennamma wife of Munisamy and daughter of Poojari Kempaiah in Patta No.147 for a total extent of 1.87 acres.

4.4. According to Oral Panchayat Partition, Poojari Kempaiah is entitled only to an extent of 91 ½ cents in Survey No.59/1. After his demise, his legal heirs, namely Sellapuriyamma sold her share to an extent of 91 ½ cents in favour of one Basamma (Second Defendant). Mallappa son of Ella Mallappa passed away leaving behind his only daughter Seekalamma @ Mallamma (First Defendant). After the death of Mallappa, Seekalamma @ Mallamma taking advantage of Joint Patta standing in the name of Mallappa, executed a Sale Deed in respect of 40 cents in Survey No.59/1 fraudulently in favour of the Second Defendant and also executed another Sale Deed dated June 17, 2010 for an extent of 0.8 cents in Survey No.59/1 in favour of the Second Defendant. The

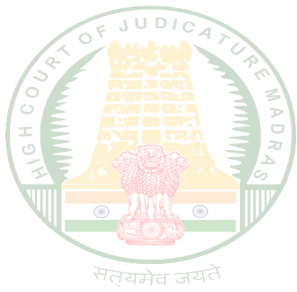


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aforsaid Sale Deeds dated May 04, 2007 and June 17, 2010 are fraudulent Sale Deeds. Based on the fraudulent Sale Deeds, the Second Defendant has got Patta for excess land to an extent of 48 cents which belonged to the Plaintiffs and effected a sub division as Survey No.59/1B.

5.The plaintiffs filed an Interlocutory Application in I.A.No.178 of 2018 along with the Plaint under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, praying to appoint an Advocate- Commissioner to visit, measure and locate the Suit Property of an extent of 48 cents in Survey No.59/1B as per the boundaries mentioned in the Suit Schedule of Properties, with the help of qualified Surveyor to note down the physical features of the Suit Property in support of FMB and other Revenue Records and to submit his report.

6.After hearing both sides, the Trial Court held that the issue involved in this Suit is whether the Sale Deeds executed in favour of the Second Defendant is valid or not and to decide on the said issue, the appointment of Advocate-Commissioner to note down the physical features of the Suit Property is not necessary. Accordingly, the Trial Court dismissed the petition.



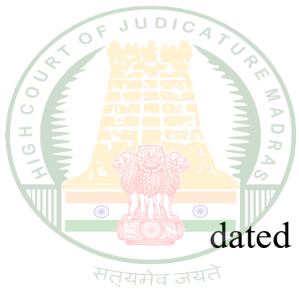
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7. Feeling aggrieved by the Dismissal Order, the Petitioners therein have preferred this Civil Revision Petition.

8. Ms. Pavithra appearing for the Revision Petitioners submits that the Plaintiffs filed the Suit for declaration, delivery of possession and permanent injunction. In order to effectively adjudicate the Suit, the Suit Property has to be identified with the help of a Surveyor. If the Advocate-Commissioner is appointed and they submit their report, it will help to better adjudicate the dispute between the parties. The Trial Court without appreciating the entire facts, erred in dismissing the petition. Accordingly, she prays to allow the Civil Revision Petition and set aside the Dismissal Order passed by the Trial Court and allow I.A.No.178 of 2018 and thereby Order appointment of an Advocate-Commissioner.

9. In response to the above submissions, Mr. R. Selva Kumar, learned Counsel appearing for the Respondents 1 and 2 submits that Mallappa is none other than the Grandfather of Plaintiff's 1 to 3 and brother of Kempaiah. In an Oral Panchayat Partition, an extent of 48 cents was allotted to Mallappa. Mallappa died leaving behind Seekalamma @ Mallamma (First Defendant). Vide registered Sale Deeds



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dated October 4, 2004, May 04, 2007 and July 17, 2010, the second defendant purchased a total extent of 1.38 acres from Chennamma's daughter - Sellapuriyamma and Mallappa's daughter - Seekalamma. In short, the Second Defendant purchased an extent of 1.38 acres in S.No.59/1. He would further submit that the Plaintiffs disputed the Sale Deeds dated May 04, 2007 and June 17, 2010. Hence, there is a title dispute involved in the Suit. In these circumstances, appointment of an Advocate-Commissioner is not necessary and the resultant report will not anyway help in adjudicating the matter. The Trial Court rightly dismissed the petition and there is no warrant to interfere in it. Accordingly, he prays to dismiss the Civil Revision Petition.

10.This Court has perused the copy of the Plaint, the Written Statement, the Order in challenge and the other connected papers annexed in the typed set of papers.

11.As stated above, Kempaiah and Poojari Kempaiah purchased an extent of 1.83 acres in Survey No.59/1. They both were equally entitled to the same and it passed on to their legal heirs post their demise. The Plaintiffs are the legal heirs of Kempaiah and one Sellapuriyamma is the

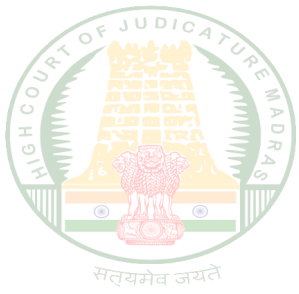


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granddaughter of Poojari Kempaiah. According to the Plaintiffs, the

Second Defendant purchased half a share in the total extent of 1.83 acres i.e., 91 ½ cents from Sellapuriyamma the granddaughter of Poojari Kempaiah and purchased an extent of 48 cents from the legal heir of Mallappa, who is claimed to be the Grandfather of Plaintiff 1 to 3 and brother of Kempaiah.

12. There appears to be no dispute with the 91 ½ cents in Survey No.59/1 purchased by the second defendant. The dispute is only with the 48 cents in Survey No.59/1. The questions involved in the Suit are whether Mallappa son of Ella Mallappa, who is the father of the First Defendant was entitled to the aforesaid extent of 48 cents in Survey No.59/1 and whether the Sale Deeds dated May 04, 2007 and June 17, 2010 executed by the First Defendant in favour of the Second Defendant are valid or not. The answers for these questions can be found only in a full fledged trial. In case, if the Court concludes that the aforesaid Sale Deeds executed by the First Defendant in favour of the Second Defendant are valid, the Plaintiffs have no case at all.



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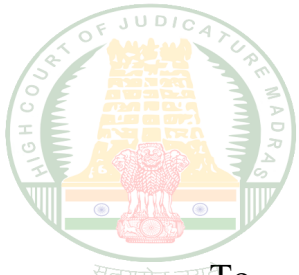
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13.To decide the title dispute involved in this case, this Court is of the view that there is no need for appointment of an Advocate-Commissioner to measure the Suit Property. In other words, Appointment of Advocate-Commissioner is not necessary to find answers to the questions involved in this case. The Trial Court after appreciating the entire facts and circumstances, rightly dismissed the petition. Hence, this Court does not find any irregularity or illegality in the Order passed by the Trial Court. Hence, this Civil Revision Petition does not have any merit and deserves to be dismissed.

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

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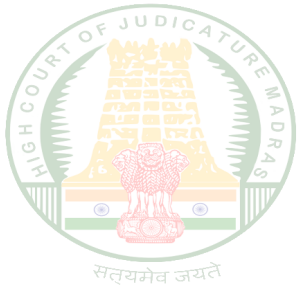
Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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The Principal Subordinate Court,
Hosur.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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