

CRP(MD). No.297 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 03.07.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

CRP(MD). No.297 of 2023
and
CMP(MD)No.1442 of 2023

1.Carmel Rose @ Viji

2. Ubald

... Petitioners

Vs

1.Blazy

2.Bilus

3.Broonal

4.Rani Brown

5.Alangara Annai Church,
Represented by its Reverent Father,
Carmal Annai Church, Vavarai,
S.T. M. Ankad (Post), Arudesam Village,
Vilavancode Taluk,
Kanyakumari District.

... Respondents



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PRAYER :-

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Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the fair and decreetal order in I.A. No. 2/19 in O.S. No. 65/19 passed Principal District Munsif Court, Kuzhithurai dated 13.06.2022.

For Petitioners : Mr.A.Balakrishnan

For Respondents : Mr.Ramkumar
(Legal Aid) for R1 to R3 & R5

ORDER

The Civil Revision Petition is challenging the filed order passed by the trial Court dismissing the application filed by the petitioner seeking appointment of an Advocate Commissioner.

2.The petitioners/plaintiffs filed a suit seeking permanent injunction restraining the defendants from trespassing into the suit properties with a view to closing the pathway or committing waste and thereby, causing irreparable damages to the suit property.



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3. According to the plaintiffs, the suit 'A' schedule property, measuring an extent of 9.5 cents, belongs to the first plaintiff. The suit 'B' schedule property, measuring an extent of 3.165 cents, belongs to the second plaintiff. Both the 'A' and 'B' Schedule properties are comprised in R.S.No.369/3, correlated to old S.No.2908, and have a width of five square links, which has been described as the 'C' Schedule property in the plaint. The suit 'C' schedule property is an exclusive pathway for having ingress and egress to the suit 'A' and 'B' schedule properties. It was claimed by the petitioners that they have acquired a right of easement by prescription over the suit 'C' schedule property, as they had been enjoying it for nearly 35 years without any obstruction from anybody. The defendants made an attempt to encroach upon the suit 'C' schedule property and, hence, the instant suit has been filed by the plaintiffs.

4. The respondents/defendants filed a written statement and denied the very existence of suit 'C' schedule property. According to the defendants, the suit 'C' schedule property was not at all in existence and the same was never used by the plaintiffs.



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5. Since there is a dispute with regard to the very existence of the suit 'C' schedule property, the instant application had been filed by the petitioners/plaintiffs seeking appointment of an Advocate Commissioner, and the same was opposed by the respondents. The trial Court dismissed the application. Aggrieved by the same, the petitioners are before this Court.

6. The learned counsel appearing for the petitioners would submit that, in the light of the pleadings, the defendants have disputed the very existence of the suit 'C' schedule property and, therefore, the appointment of an Advocate Commissioner is absolutely necessary.

7. The learned counsel appearing for the respondents would submit that the petitioners have filed a suit for bare injunction and, in such a case, the petitioners have to prove their possession by evidence and the appointment of an Advocate Commissioner is not at all necessary.

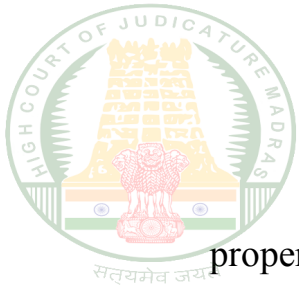


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8. Though the learned counsel appearing for the respondents submitted that the appointment of an Advocate Commissioner is not necessary in a suit for bare injunction, in the light of the dispute with regard to the very existence of the suit 'C' Schedule property, the appointment of an Advocate Commissioner for local inspection is the only way to ascertain the existence of the property as described in the plaint. Therefore, this Court feels that the appointment of an Advocate Commissioner is absolutely necessary, notwithstanding the fact that the suit is for bare injunction. The Court below, without properly appreciating the controversy in the pleadings with regard to the very existence of the suit 'C' schedule property, erroneously dismissed the application.

9. In the light of the above facts and circumstances of the case, the impugned order in I.A.No.2 of 2019 in O.S.No.65 of 2019 passed by the District Munsif Court, Kuzhithurai, is set aside and the Civil Revision Petition stands allowed. The District Munsif Court, Kuzhithurai, is directed to appoint an Advocate Commissioner to inspect the suit



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property and file a report with proper measurements. The Advocate Commissioner shall also note down the physical features of the suit 'C' schedule property. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2026

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NCC : Yes/No

TO

- 1.The District Munsif Court, Kuzhithurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

sjj

ORDER
IN
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