

C.R.P(MD)No.1806 of 2026

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2026

CORAM

THE HON'BLE MR. JUSTICE S.SOUNTHAR

C.R.P.(MD)No.1806 of 2026 and
C.M.P(MD)No.8759 of 2026

A.Sampathraj

.. Petitioner

Vs.

1.S.Benjamin Arokiaraj
2.A.Santharaj

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records and set aside the order dated 01.12.2025 passed in I.A.No.4 of 2024 in O.S.No.326 of 2019 on the file of the I Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.R.Harihara Selvam for
M/s Isaac Chambers
For Respondents : Mr.C.Vekeeswaran

ORDER

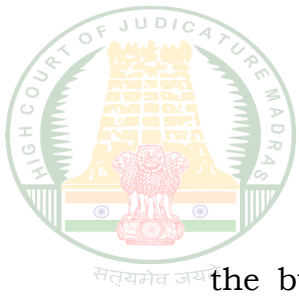
The Civil Revision Petition has been filed challenging the order passed by the trial Court dismissing the application filed by the petitioner/first defendant seeking the appointment of an Advocate Commissioner to measure the suit property with the assistance of a qualified Surveyor and to file a report.



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2. The first respondent/plaintiff filed the suit seeking a bare injunction against the petitioner and the second respondent. According to the first respondent/plaintiff, he is the owner of the suit property measuring 1,782 square feet in New T.S. No.11. It is his case that he purchased the suit property as a vacant site and thereafter, put up a two-storeyed residential building therein, leaving open space on the eastern, northern and southern sides. It is further stated in the plaint that the defendants, who own the property situated on the eastern side of the plaintiff's property, attempted to interfere with his possession over the vacant space lying on the eastern side of his property, as he refused to sell the said portion to them. Hence, the suit came to be filed seeking a permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The petitioner/first defendant filed a written statement denying the averments made in the plaint. According to the defendants, the plaintiff falsely claimed that he had constructed his building by leaving open space on the east, north, and south sides. It is the specific case of the defendants that their father purchased the eastern portion of the property on 15.12.1969 and, while constructing

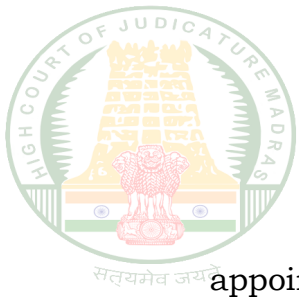


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the building, left an open space measuring 5 feet 6 inches on the western side, which forms part of their property. The defendants further contended that the open space on the western side lies entirely within the property purchased by them. They also disputed the description of the suit property as set out in the plaint and prayed for dismissal of the suit.

4. Pending suit, an application has been filed by the first defendant seeking appointment of an Advocate Commissioner to measure the suit property with the help of a qualified Surveyor. The said application was dismissed by the trial Court on the ground that appointment of Advocate Commissioner was not necessary in the suit for bare injunction. The trial Court also found that in an earlier suit filed by the petitioner/first defendant's father, an Advocate Commissioner had been appointed twice and the properties had already been measured. Therefore, according to the trial Court, there was no necessity to appoint another Advocate Commissioner for measuring the present suit property.

5. The learned counsel appearing for the petitioner submitted that, in view of the controversy raised in the pleadings regarding the location and extent of the open space in the suit property, the



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appointment of an Advocate Commissioner is absolutely necessary to identify and locate the same.

6. Per contra, the learned counsel appearing for the first respondent/plaintiff would submit that the suit is one for bare injunction, and therefore, the plaintiff has to establish his possession by leading oral and documentary evidence. In such a suit, the appointment of an Advocate Commissioner is neither necessary nor warranted.

7. A perusal of the pleadings of the parties indicates that there is a serious dispute regarding the location of the open space lying between the buildings of the plaintiff and the defendants. According to the plaintiff, the open space situated on the eastern side of his house forms part of his property. On the other hand, according to the defendants, the open space situated on the western side of their house falls within the boundaries of the property purchased by the petitioner's father. Thus, the main controversy to be decided in the suit relates to the identity and location of the open space lying between the buildings of the plaintiff and the defendants.



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8. In such circumstances, if an Advocate Commissioner is appointed to measure the properties of both the plaintiff and the defendants with the assistance of a qualified Surveyor and with reference to their respective title deeds, the Commissioner's report would certainly assist the trial Court in effectively resolving the dispute between the parties. Therefore, this Court is of the view that the relief sought for by the petitioner is sustainable, and the impugned order passed by the trial Court dismissing the application for appointment of an Advocate Commissioner is liable to be interfered with.

9. Accordingly, the Civil Revision Petition stands allowed. The impugned order passed by the trial Court is set aside. The trial Court is directed to appoint an Advocate Commissioner to measure the properties of the plaintiff and the defendants with the assistance of a qualified Surveyor, with reference to their respective title deeds, and to file a report before the trial Court. No costs. Consequently, the connected miscellaneous petition is closed.

17.07.2026

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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To

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



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S.SOUNTHAR, J.

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