

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated : 05.02.2019**

**CORAM:**

**THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR**

**C.R.P.(PD) No. 1789 of 2013**  
**and M.P.No.1 of 2013**

1.Allasamy @ Kumarasamy  
2.Thirupathi  
3.Nebu

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Petitioners

Vs.

1.Kumaresan  
2.Shanmugam  
3.Radhakrishnan  
4.Yagavalli  
5.Paramanandham

6.The District Collector,  
Tiruvallur,  
Tiruvallur District.

7.The Tahsildar,  
Gummidipoondi Taluk,  
Tiruvallur District.

8.The Commissioner of Panchayat Union,  
Gummidipoondi Taluk,  
Tiruvallur District.

9.The Village Administrative Officer,  
Thervoy Village,  
Gummidipoondi Taluk,  
Tiruvallur District.

10.Sanjay

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Respondents

**Prayer :** Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order dated 15.12.2010 passed in I.A.No.912 of 2010 in O.S.No.36 of 2010 on the file of District Munsif Court, Ponneri.

For Petitioners : Mr.N.R.Anantha Ramakrishnan

For Respondents : No appearance

### **ORDER**

The petitioners, who are the defendants 8 to 10 in O.S.No.36 of 2010 on the file of the District Munsif, Ponneri, has filed the present Civil Revision Petition to set aside the order dated 15.12.2010 passed in I.A.No.912 of 2010 in O.S.No.36 of 2010.

2. The brief facts of the case is as follows :

The plaintiffs had filed a suit in O.S.No.36 of 2010 seeking permanent injunction against the revision petitioners and others from interfering with their peaceful possession and enjoyment of the suit properties. The petitioners had filed I.A.No.912 of 2010 under Order XXIV Rule 9 and Section 151 CPC, for appointment of an Advocate Commissioner along with the help of the Taluk Surveyor to measure the suit properties both to the north and south of the street in S.No.36/64 and locate the northern and southern boundaries of the street in S.No.36/64 and point out respective encroachments. On 15.12.2010, the trial Court has dismissed the aforesaid Application.

Against the said dismissal, the petitioners have filed the present Revision Petition before this court.

3. The learned counsel for the revision petitioners would submit that, in fact the street has been shown as suit properties, the plaintiffs and their relatives were put up constructions and thereby reduced the width of the street in S.No.34/64. Hence, it is the contention of the revision petitioners that the application for appointment of Advocate Commissioner has not been filed to gather the evidence but only to identify the properties. Therefore, the order of the trial Court requires interference.

4. Heard the learned counsel appearing for the petitioners. Despite the name is printed in the cause title, there is no representation on behalf of the respondents.

5. I have perused the entire materials available on record and the pleadings of the respective parties.

6. The plaintiffs had filed a suit in O.S.No.36 of 2010 seeking permanent injunction against the revision petitioners and others, in

respect to several schedule mentioned properties. It is the main case of the revision petitioners / defendants that some portion of the street are also reduced by way of encroachment of the plaintiffs and shown as the suit properties. Therefore, the appointment of Commissioner is absolutely necessary and the entire dispute revolving around between the parties with regard to the identity of the properties. Unless, the properties are properly identified with the help of the concerned Taluk Surveyor, it will be difficult for the trial Court even to adjudicate the dispute between the parties. Therefore, it cannot be contended that the application has been filed only to gather the evidence. In fact, the application has been filed only to identify the suit properties by proper demarcation.

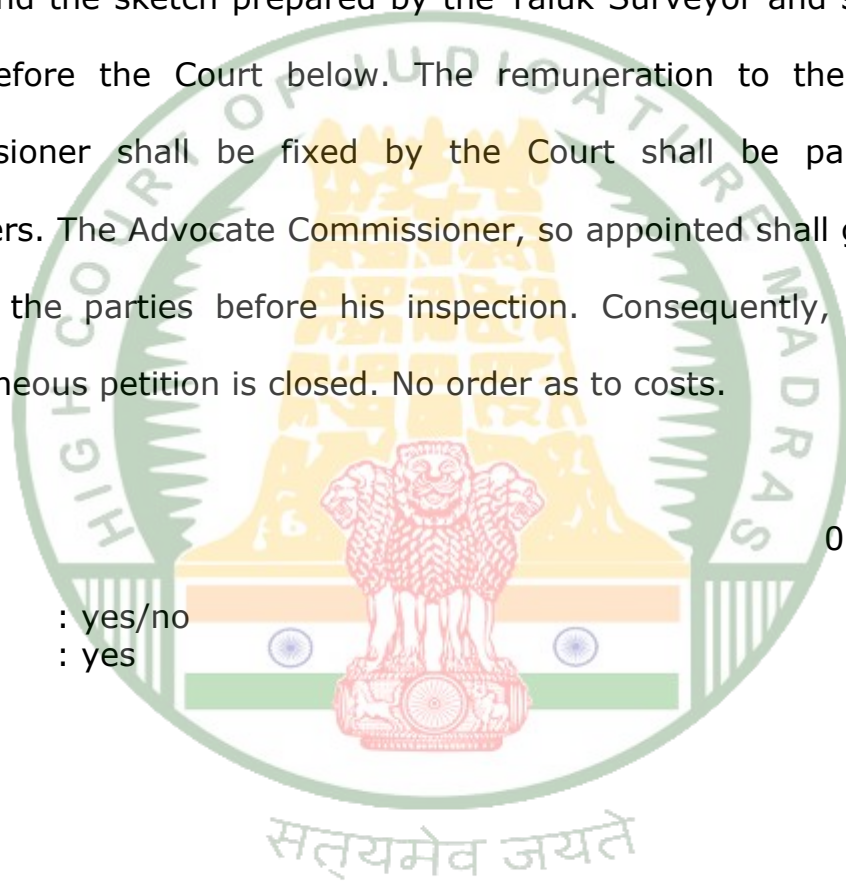
7. Therefore, in the interest of justice, I am of the view that the Civil Revision Petition has to be allowed, by setting aside the impugned order passed by the trial Court.

8. In the result, the Civil Revision Petition is allowed and the impugned order passed by the Court below is set aside. The Court below is directed to appoint the Advocate Commissioner having sufficient standing at the Bar to inspect the properties with the help of

Taluk Surveyor, in order to identify, measure and demarcate the properties, within a period of one month from the date of receipt of a copy of this order. Thereafter, the trial Court is directed to dispose of the suit within a period of six months. The Commissioner shall file his report and the sketch prepared by the Taluk Surveyor and submit the same before the Court below. The remuneration to the Advocate Commissioner shall be fixed by the Court shall be paid by the petitioners. The Advocate Commissioner, so appointed shall give notice to both the parties before his inspection. Consequently, connected miscellaneous petition is closed. No order as to costs.

05.02.2019

Internet : yes/no  
Index : yes  
sbn / sri



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**To**

- 1.The District Munsif Court,  
Ponneri.
- 2.The District Collector,  
Tiruvallur,  
Tiruvallur District.
- 3.The Tahsildar,  
Gummidipoondi Taluk,  
Tiruvallur District.
- 4.The Commissioner of Panchayat Union,  
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**N. SATHISH KUMAR.J.,**

sbn/sri



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