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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**CRP(MD)No.754 of 2019**  
**and C.M.P. (MD) No.4585 of 2019**

1.Samikkan  
2.M.S.S.George Kosal

... Petitioners/Petitioners  
/Defendants 1 & 2

vs.

1.Selvasahayam

...1<sup>st</sup> Respondent/1<sup>st</sup> Respondent  
/Plaintiff

2.The Thasildhar  
Kalakadu Sub Registrar Office  
Kalakadu  
Nanguneri Taluk  
Tirunelveli District

3.The Sub-Registrar  
Kalakadu Sub Registrar Office  
Kalakadu  
Nanguneri Taluk  
Tirunelveli District

4.The State of Tamil Nadu  
Represented by its District Collector  
Tirunelveli  
Kokkirakulam  
Tirunelveli

...Respondents 2 to 4/Respondents 2 to 4  
/Defendants 3 to 5

**PRAYER:** Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.02.2019 made in I.A.No.221 of 2018 in O.S.No.29 of 2016 on the file of the District Munsif Court, Nanguneri.

For Petitioners : Mr.H.Arumugam

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 13.02.2019 made in I.A.No.221 of 2018 in O.S.No.29 of 2016 on the file of the District Munsif Court, Nanguneri.

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2.The learned counsel for the petitioners would submit that the first respondent herein has filed a suit in O.S.No.29 of 2016 for permanent injunction on the ground that he is the absolute owner of the suit property. Pending Suit, I.A.No.221 of 2018 has been filed by the petitioners /respondents 1 & 2 for appointment of Advocate Commissioner to inspect and identify the location of the suit property with the help of Taluk Surveyor.

3.After analysing oral and documentary evidence available on record, the trial Court has dismissed the said application on the ground that the petitioners have not filed any counter claim in respect of the 2<sup>nd</sup> schedule of the suit property. The learned trial Judge had also observed that the Tahsildar, second respondent herein has also specifically stated in his written statement that Nilavodai runs in the 2<sup>nd</sup> schedule property and as such, the application for appointment of Advocate Commissioner is not maintainable. Against the said order, the present Civil Revision Petition has been filed.

4.The learned counsel for the petitioner would submit that the Court below has failed to consider that the dispute with regard to lie and location, cannot be proved through oral and documentary evidence and the same has to be proved by appointing an Advocate Commissioner. In support of his contention, he relied upon the Judgment of this Court reported **in (2008) 6 MLJ 359 in A.Sulthan and another Vs.Mohammed Dasthagir**, stating that if there is any dispute in respect of the property, Advocate Commissioner can be appointed. Hence, to render substantial justice, the petition ought to have been allowed.

5.It is seen that the petitioners have not filed counter claim against the 2<sup>nd</sup> schedule of the suit property and the Tahsildhar has also filed a report stating that the property in dispute is a Nilavodai. In such circumstance, the petitioners have to prove their case by documents available with them and they cannot prove by appointment of advocate commissioner. In my considered opinion, there is no infirmity in the order passed by the Court below and the Judgment relied on by the learned counsel for the petitioners has no application to the present case on hand.



6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

Msa

To

1. The District Munsif, Nanguneri

+ 1 CC TO Mr. H. Arumugam, ADVOCATE IN SR No. 67823

**CRP (MD) No. 754 of 2019**  
**and C.M.P. (MD) No. 4585 of 2019**

**KS (18.06.2019) 3 P 3 C**