

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

**DATED: 18.08.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**C.R.P. (PD) No.1647 of 2021**  
**and C.M.P. No.12780 of 2021**

Raju

...

Petitioner /  
Defendant

*versus*

1. Marappa Gounder  
2. Ramesh

...

Respondents /  
Plaintiffs

**PRAYER:** Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.03.2021 made in I.A. No.1 of 2020 in O.S. No.253 of 2014 on the file of the Additional District Munsif Court at Tiruchengode.

For Petitioner : Mr.T.L.Thirumalaisamy

*सत्यमेव जयते*  
**ORDER**

This Civil Revision Petition is filed for setting aside the order dated 18.03.2021 passed in I.A. No.1 of 2020 in O.S. No.253 of 2014 on the file of the learned Additional District Munsif, Tiruchengode.

2. The respondents filed a suit in O.S.No.253 of 2014 claiming the relief of permanent injunction against the petitioner that he should not interfere with the peaceful possession and enjoyment of the suit property in Survey No.36/3A in Vettuvapalayam village. The defendant / petitioner contested the suit, claiming that he perfected title by adverse possession in respect of certain portion of the suit property. It is seen from the order of the learned Additional District Munsif, Tiruchengode, that the trial had commenced, evidence on the side of the plaintiffs was completed. D.W.1 was examined and the case is pending for further cross examination of D.W.1, under such circumstances, this petition is filed for appointment of an Advocate Commissioner to inspect the suit property.

3. The learned counsel for the petitioner submitted that though the respondents filed the suit for bare injunction, the petitioner perfected title by adverse possession in respect of certain portion of the suit property by his long and continuous possession, therefore, it is absolutely necessary for appointing an Advocate Commissioner for measuring the suit property. Further submitted that, the learned trial Judge, without considering

this aspect, dismissed the petition. It is found that the petitioner cannot seek to file petition for appointment of Advocate Commissioner to gather evidence.

4. As stated above, the suit was filed by the respondents for the relief of bare injunction claiming themselves to be in possession and enjoyment of the suit property. As a dominant litigants, it is for the respondents to prove that they are in possession and enjoyment of the suit property on the date of filing of the suit. The possession and enjoyment of the suit property by the plaintiffs and defendant have to be proved only by oral and documentary evidence. The Advocate Commissioner's report will no way be the primary evidence to come to the conclusion of the possession of the parties. It is seen that the suit was filed in the year 2014, plaintiffs' side evidence was over. D.W.1 was examined in full and then subsequently recall for further cross examination. Petition to appoint Advocate Commissioner is filed in the year 2020, especially after knowing about the evidence given by the respondents. This petition is filed only with a view to gather evidence in support of the case of the petitioner.

5. As already stated, as the dominant litigants, the respondents have to prove that they are in possession and enjoyment of the suit property. Belatedly, this petition was filed with a huge delay and to gather evidence. The petitioner's claim that he is in long possession and enjoyment of certain portion of the suit property and perfected the title by adverse possession, has to be proved only through oral and documentary evidence. The learned trial Judge has considered all these aspects and rightly dismissed the petition. This Court finds no reason to interfere with the finding of the learned Additional District Munsif Court at Tiruchengode and the order is confirmed.

6. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

**18.08.2021**

Speaking order / Non-speaking order  
Index : Yes / No

sri

4/6

To

The Additional District Munsif Court,  
Tiruchengode.



WEB COPY

**G.CHANDRASEKHARAN, J.**

sri



**C.R.P. (PD) No.1647 of 2021**  
**and C.M.P. No.12780 of 2021**

WEB COPY

**18.08.2021**