



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 01.12.2021**

**CORAM**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

**C.R.P (MD) No.1802 of 2021**

**and**

**C.M.P (MD) No.9692 of 2021**

Palvannan

... Petitioner/Petitioner/Appellant

**Vs.**

1.N.Subbiah

2.S.Perma

... Respondents/Respondents/Respondents

**PRAYER:-** Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 02.08.2021 made in I.A.No.1 of 2019 in A.S.No.07 of 2018 on the file of the Sub Court, Sankarankovil and set aside the same.

For Petitioner : Mr.V.Sasi Kumar

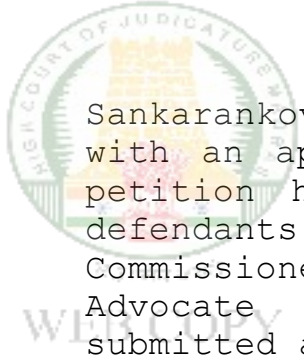
**ORDER**

The petitioner/appellant, whose petition for appointment of an Advocate Commissioner in the appeal suit was dismissed, is before this Court, challenging the said order which is passed in I.A.No.1 of 2019 in A.S.No.7 of 2018.

2.The facts in brief are as follows:-

(i) The petitioner herein had filed O.S.No.194 of 2007 on the file of the District Munsif cum Judicial Magistrate, Sivagiri, for declaration that the suit first and second items of properties are the properties of the plaintiff and for an injunction restraining the defendants from interfering with the same and for mandatory injunction directing the defendants to remove the encroachment in the fifth item of the suit properties and to declare the suit items 3 and 4 as the common pathway of the plaintiff and defendants and also for a consequential injunction. The suit after contest was dismissed by judgment and decree dated 30.10.2017. Aggrieved by the same, the petitioner herein has filed A.S.No.7 of 2018 on the file of the Sub Court,

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Sankarankovil. In the appeal, the petitioner has come forward with an application to appoint an Advocate Commissioner. The petition has been filed stating that in the trial Court, the defendants had taken out an application for appointing an Advocate Commissioner to visit the property and submit the report. The Advocate Commissioner had visited the suit properties and submitted a report.

(ii) The petitioner would submit that the respondents / defendants are continuing with the construction in the suit property and in order to identify the same, it is necessary that an Advocate Commissioner be appointed. The respondents would object to the said petition saying that it is nothing but an attempt to drag on the proceedings and that the Advocate Commissioner who had been appointed by the trial Court, had submitted a very detailed report along with his plan.

(iii) The learned Subordinate Judge, Sankarankovil, after hearing the parties had proceeded to dismiss the said petition. The learned Judge held that the petition has filed only on the ground that the defendants had made construction in the suit property. If such petitions are entertained, then for every construction that is put up, the Court would have to appoint an Advocate Commissioner to note down the physical features and this would result in prolonging the litigation between the parties.

3. Heard the learned counsel for the petitioner and perused the records.

4. The petitioner has come forward with the case that there is an encroachment and the same has to be removed. The earlier commissioner report had clearly described the physical features of the suit property in very great details. The petitioner has not made out any valid reason for seeking an appointment of new commissioner to note down the physical features. He has also not stated as to how the earlier commissioner report is lacking in material particulars and he has also not sought to have the earlier commissioner report scraped. Further the trial Court in its judgment had stated that the petitioner had not taken any steps to have the earlier commissioner's report and plan marked as exhibits and it was the Court which had *suo motu* marked it. That apart no objections have been filed by the plaintiff to the earlier commissioner's report and plan marked as Ex.C1 and C2. Therefore, without stating how Ex.C1 and C2 was wrong and without scrapping the same the present petition seeking appointment of an Advocate Commissioner is not maintainable.

5. In these circumstances, I do not see any reason for interfering with the order of the court below and accordingly,

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

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar (CS)

cp

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:-

The Subordinate Judge,  
Sankarankovil.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-37130[F] dated 02/12/2021)

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**01.12.2021**

PS (CO)  
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