



CRP(MD).No.2512 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 20.11.2024

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI**

C.R.P(MD)No.2512 of 2022  
and  
C.M.P(MD)No.12351 of 2022

Chinnakalai : Petitioner/Petitioner/Appellant

Vs.

Lakshmanaperumal : Respondent/Respondent/Respondent

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 03.08.2022 passed in I.A.No.01 of 2020 in A.S.No.09 of 2020 on the file of the Subordinate Judge, Theni.

For Petitioner : Mr.N.Vallinayagam  
For Respondent : Ms.K.Hemakarthiskeyan

### **ORDER**

The Civil Revision Petition is preferred against the order dated 03.08.2022 passed in I.A.No.01 of 2020 in A.S.No.09 of 2020 on the file of the learned Subordinate Judge, Theni.



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2.The present revision petitioner is the appellant in A.S.No.9 of 2020. The suit in O.S.No.56 of 2016 was filed by the respondent/plaintiff for declaration and injunction. The said suit was decreed on 03.01.2020. Against which, the present revision petitioner preferred an appeal in A.S.No.9 of 2020 before the Sub Court, Theni. Pending the appeal suit, the revision petitioner made an application in I.A.No.1 of 2020 for appointment of Advocate Commissioner to inspect the suit property and to measure the same with the help of Taluk Surveyor. The said application was dismissed by the First Appellate Court stating that there is no dispute with regard to the identification of the suit property and the dispute is only with regard to 25 cents, which is alleged to have been in existence on the southern side of 3 acres of the suit property and therefore, there is no necessity for appointment of the Advocate Commissioner. As such, the above application was dismissed. Aggrieved by this, the present revision is preferred.

3.The learned counsel appearing for the revision petitioner would submit that the trial Court dismissed the suit in O.S.No.178 of 2013 on the ground that the revision petitioner ought to have established the



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availability of the property by claiming for appointment of Advocate Commissioner and also the suit in O.S.No.56 of 2016 was decreed in favour of the respondent/plaintiff on the finding that the extent of 25 cents in S.No.183/5 does not belong to the vendor of the revision petitioner. Hence, the revision petitioner was constrained to file an application for appointment of Advocate Commissioner before the First Appellate Court. However, the First Appellate Court erroneously dismissed the said application, which requires interference by this Court.

4.The learned counsel for the revision petitioner further argued that the application for appointment of Advocate Commissioner can be made even at the appellate stage when there is a dispute in relation to the identity of the property. In support of his contention, he has relied upon the decisions of this Court in the case of ***K.S.Palanisamy Vs. Ramasamy & another*** reported in ***2017-2-L.W.119*** and in the case of ***PR.Chockalingam Vs. M.Pichai and another*** reported in ***(2003) 2 MLJ 399***.

5.On the other hand, the learned counsel appearing for the respondent would submit that the said application and the present revision



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is preferred only to drag on the proceedings. Hence, the same is liable to be dismissed.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The above application is filed by the petitioner before the First Appellate Court for inspecting the suit property by the Advocate Commissioner for identifying the disputed property. Since there is a substantial documentary evidence placed before both the Courts by the respective parties, there is no need for appointment of Advocate Commissioner. Moreover, there is no dispute with regard to identification of the properties. While so, the Advocate Commissioner cannot be appointed for collecting evidence. Accordingly, the present application is devoid of merits and the judgments cited on the side of the revision petitioner are not applicable to the present facts of the case.

8.Accordingly, this Civil Revision Petition is dismissed as devoid of merits. The learned Subordinate Judge, Theni, is also directed to dispose



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of the appeal in A.S.No.09 of 2020 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

**20.11.2024**

Index : Yes / No

Internet : Yes/ No

sjj

To

The Subordinate Judge, Theni.



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**K. GOVINDARAJAN THILAKAVADI, J.,**

sjj

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