



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.06.2025

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**THE HONOURABLE MR JUSTICE P.B. BALAJI**

CRP.No.164 of 2025

& CMP.No.1205 of 2025

Natarajan

... Petitioner

Vs.

1.Balashanmughasundaram

2.Senthil Kumar

... Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 22.11.2024 passed in I.A.No.02 of 2023 in O.S.No.201 of 2023 on the file of the Sub-Court, Palladam.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : Mr.L.Mouli

### **ORDER**

The Civil Revision Petition has been filed to set aside the order dated 22.11.2024 passed in I.A.No.02 of 2023 in O.S.No.201 of 2023 on the file of the Sub-Court, Palladam.



WEB COPY 2. Heard Mr. Govi Ganesan, learned counsel for the petitioner and Mr. L. Mouli, learned counsel for the respondents.

3. The plaintiff, aggrieved by dismissal of an application seeking appointment of an Advocate Commissioner, has filed the above revision.

4. The learned counsel for the petitioner/plaintiff would take me through the relief in the plaint, the prayer sought for in the interlocutory application seeking appointment of Advocate Commissioner and the impugned order passed by the Trial Court. He would further state that the Trial Court has committed an error in observing that the Commissioner can be appointed only at the time of delivering judgment. He would also contend that if the appointment of Advocate Commissioner is going to be along with the disposal of the suit, the Court itself would become *functus officio* and the plaintiff would not be in a position to enjoy the benefits of appointment of the Advocate Commissioner at that point of time. He would therefore pray for the revision being allowed.



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5.Per contra, the learned counsel for the respondents would submit that the very relief that has been sought in the plaint itself is for fixing the boundaries and for that purpose, an appointment of Commissioner has been sought for. The very same prayer has been again sought in the interlocutory application by seeking appointment of a Commissioner. He would therefore state that the Trial Court has rightly dismissed the application. He would further state that the description of the property, as mentioned in the plaint, is disputed of the respondents and therefore, the plaintiff will have to necessarily establish his case at trial.

6.I have carefully considered the submission advanced by the learned counsel on either side.

7.As rightly pointed out by the learned counsel for the respondents that when the plaintiff had sought for the following relief in the plaint, namely '*directing the defendants to fix the boundaries of the properties described in A schedule as per their enjoyment, which is more specifically shown in the rough plan filed along with the plaint by appointing a Commissioner to measure the same with Assistance of Surveyor*', the



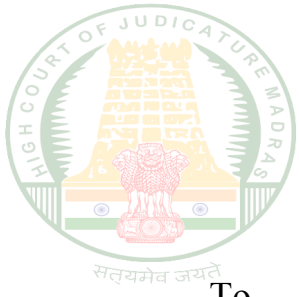
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application to appoint a Commissioner is virtually a preemption of the relief sought for in the main suit. Therefore, I do not find any infirmity in the Trial Court dismissing the application. The plaintiff cannot have any apprehensions whatsoever of the Court becoming *functus officio* since the plaintiff, if armed with a decree, can always execute the same by initiating execution proceedings.

8. With the above observation, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

24.06.2025

Speaking/Non-speaking : Yes/No  
Index : Yes / No  
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To  
The Sub-Court, Palladam.



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**P.B. BALAJI,J.**

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