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Civil Revision Petition No. 240 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No. 240 of 2025
and C.M.P.No.1569 of 2025

1. Kaliyamma

2. Arasarathnam

3. Dhanush

... Petitioners

Vs

Murugaiah

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order of the Learned Subordinate Judge, Gudalur, the Nilgiris in I.A.No.2 of 2024 in O.S.No.15 of 2023 dated 25.10.2024.

For Petitioners : Mr.J.Franklin

For Respondent : Mr.D.Kumaralingam

ORDER

The defendants, whose application for appointing an Advocate Commissioner to inspect and note down the physical features of the suit



property and building with an expert was rejected, are the petitioners before this Court.

2. The respondent / plaintiff had filed the suit for recovery of "A" schedule property and for an injunction restraining the petitioners/defendants from trespassing into the "B" schedule property.

3. Pending the suit, the petitioners had come forward with an application for appointing an Advocate Commissioner to inspect the suit property. It is their contention in the affidavit filed in support of the application that on the basis of an unregistered Gift Deed, the respondent had gifted the property to the 1st petitioner and on this promise, the petitioners had invested more than a sum of Rs.20 Lakhs for constructing a building in the suit property. The respondent has made vague averments regarding the investment in the plaint and he has also not taken any steps to assess the value of the building. Therefore, the petitioners have come forward with the impugned application.



4. The respondent / plaintiff had filed a counter *inter-alia* contending that the 1st petitioner, who was very much aware of the fact that the property had been purchased for the respondent's 2nd daughter, had compelled him to give the "A" schedule property to her, which he refused by stating that if any property was left after his and his wife's death she could take the property but before that, he would not part with the property. However, the petitioners 1 and 2 compelled him to give the property and armtwisted him into signing a gift deed which was not a registered gift deed. The respondent would submit that he has been doing the masonry work and earning considerable income. That apart, he was also rearing livestock.

5. The present application for appointment of Advocate Commissioner is only for the purpose of collecting the evidence. If the petitioners have put up the construction as stated by them, there is no necessity to have the commissioner appointed. Therefore, the application deserves to be rejected, particularly when it is made only with an intent to drag on the proceedings. The application has been moved after the chief examination of P.W1 without cross examining him. The learned Subordinate



Judge, Gudalur, after hearing the parties, proceeded to dismiss the said application holding that it is nothing but dialtory tactics.

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

7. The contention of the respondent is that the house was built by him out of his own income and by pledging the jewels of his 2nd daughter. The petitioners, on the other hand, would submit that the house was constructed by them and since they did not have any evidence of the expenditure incurred, they are left with no other option but to have the Advocate Commissioner appointed to value the property. However, from a mere perusal of the affidavit filed in support of the application in question, it can be clearly deciphered that the petitioners are only trying to buttress their case by using the Advocate Commissioner to gather the evidence. In paragraphs 5 and 6 of the affidavit, they have stated as follows:

"5. I submit that as we have spent huge amount of money for construction of the said building based on the unregistered deed and by the oral promise of father of



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the 1st petitioner/1st defendant and due to the fiduciary position held by him, we could not create any documents in our favour as to the title of the property and the evidence as to the expenditure made by our part for the construction of the said building will have much relevancy to decide the suit. As such without the help of a court commission as mentioned in the prayer, we are not in a position to establish our case.

6. It is submitted that as per the plaint of O.S. No. 40/2022 filed before the Hon'ble Principal District Munsif Court, Gudalur and as per the written statement of this suit, we have stated that the value of the building in the A schedule is more than Rs. 20,00,000/- (Twenty Lakhs Only). In spite of this the plaintiff has not taken any steps to assess the value of the building with the help of a court commission. So, we have left with no other option but to file this petition to prove our case."

Therefore, from the very averment in the affidavit, it is clear that the Advocate Commissioner's application has been filed only to prove the petitioners' case. It is needless to state that this Court and the Apex Court has time and again held that the Advocate Commissioner cannot be used to gather evidence for the parties. Therefore, the order rejecting the application for appointment of the Advocate Commissioner is in order and



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this Court does not deem it fit to observe otherwise. Therefore, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2025

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
srn

To,
The Subordinate Judge, Gudalur, the Nilgiris.



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P.T.ASHA, J.,

srn

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