



CRP. PD. No.736 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on:25.06.2025

Pronounced on:14.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.736 of 2025 and
CMP. No.4237 of 2025**

1.Susai Muthu
2.Arul Mary

Petitioner(s)

Vs

1.Anthonysamy
2.Arokiyaraj

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.11.2024 made in I.A. No.6 of 2024 in O.S. No.101 of 2013 on the file of the Principal Munsif Court at Jayamkondam.

For Petitioners : Mr.K.P.P.Raja Raja Chozhan

For Respondents : Mrs.Chenthoori Pugazhendhi for
Mr.K.Balu



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ORDER

The defendants in O.S. No.101 of 2013 before the District Munsif Court, Jayamkondam, aggrieved by dismissal of their Application seeking appointment of an Advocate Commissioner have preferred above the revision petition.

2. I have heard Mr.K.P.P.Raja Raja Chozhan, learned counsel for the petitioners and Mrs.Chenthoori Pugazhendhi, learned counsel for Mr.K.Balu, learned counsel for the respondents.

3. The suit in O.S. No.101 of 2013 has been filed seeking relief of a permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties and also restraining them from creating any new pathway. Pending the suit, the petitioners herein had filed an Application in I.A. No.2 of 2020 for summoning the Advocate Commissioner to mark the Advocate Commissioner's report as well as sketch that were forming part of O.S. No.251 of 2008, which was a suit



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filed by plaintiffs, against the defendants for declaration and injunction. The said Application came to be dismissed by the Trial Court.

4. As against the same, the petitioners moved this Court in CRP. No.2557 of 2024. The revision was dismissed on 19.07.2024, granting liberty to the petitioners to move an Application for appointment of an Advocate Commissioner in the present suit. Thereafter, an Application has been taken out by the defendants viz., the revision petitioners herein, citing the liberty granted by this Court in CRP. No.2557 of 2024. However, the said Application was resisted by the respondents/plaintiffs and the Trial Court also dismissed the Application holding that the High Court in CRP. No.2557 of 2024 had only granted liberty to file an Application and the same did not warrant the Trial Court to allow the Application filed, if any.

5. The learned counsel for the petitioners would contend that this Court clearly held in Paragraph No.4 of the order in CRP. No.2557 of 2024 that the proper relief for the petitioners would have been to move an Application for appointment of Advocate Commissioner and ask him to conduct an inspection



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and submit a report and thereafter, if he is dissatisfied, to examine him in evidence. Thereafter, the said Civil Revision Petition was dismissed, giving liberty to the petitioners herein to move an Application for appointment of an Advocate Commissioner. No doubt, merely because liberty is granted, it would not automatically require the Trial Court to allow the Application for appointment of a Commissioner. However, the Trial Court while dismissing the Application has found that merely because, this Court has not indicated in the order that an Advocate Commissioner should be appointed, the Application for appointment of Commissioner itself is not maintainable. The Trial Court has also found that the Application has been filed after 11 years after institution of the suit and the intention of the defendants appears to be to drag the proceedings further.

6. The suit has been filed by the respondents for bare injunction to restrain the defendants from interfering with the plaintiffs' possession and enjoyment of the suit property and also to restrain the defendants from forming any new pathway. It is the specific case of the petitioners that in an earlier suit in O.S. No.251 of 2008, the Advocate Commissioner inspected the property



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and filed a report. When the petitioners attempted to mark the said report in the present proceedings, the plaintiffs have objected to the same and only under such circumstances, I.A. No.2 of 2020 was filed for summoning the Advocate Commissioner in order to mark the report and sketch. The said Application was also resisted on the same ground that the petition was filed belatedly and only to drag on the proceedings. Despite the said findings rendered by the Trial Court, this Court, in the revision filed against the said order, chose to grant liberty to take out an application for appointment of Advocate Commissioner. In fact as pointed out by the learned counsel for the petitioners, at Paragraph No. 4, this Court has clearly held that the petitioners can move an Application for appointment of Commissioner and also examine the Commissioner, if they are dissatisfied of the report of the Commissioner. Therefore, a clear indication was given by this Court that the proper course of action open to the petitioner was to take out an Application for appointment of Advocate Commissioner.

7. In *Haryana Waqf Board Vs. Shanti Sarup and others*, reported in (2008) 8 SCC 671, the Hon'ble Supreme Court held that when the controversy between the parties is regarding demarcation of the land and the parties being



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neighbors, the proper course of action is to direct inspection by a Local Commissioner under Order XXVI Rule 9 of CPC. The present dispute also pertains to existence of pathway and therefore, in the light of the observations of this Court, the Trial Court ought to have appoint an Advocate Commissioner. On the contrary, the Trial Court has verbatim repeated the very same reasons that were pointed out while dismissing the earlier Application in I.A. No.2 of 2020. Therefore, I am inclined to set aside the order of the Trial Court. The Trial Court clearly erred in dismissing the Application for appointment of Advocate Commissioner, considering the fact that this Court has granted liberty to the petitioners to take out an Application in the present suit.

8. In view of the above, this Civil Revision Petition is allowed and the order passed in I.A. No.6 of 2024 in O.S. No.101 of 2013 is set aside. The Trial Court shall appoint an Advocate Commissioner to inspect the property as prayed for in I.A. No.6 of 2024 along with Taluk Surveyor and file a report. It shall be open to the parties to file objections to the report filed by the Commissioner and the Surveyor and necessarily, the parties are also at liberty



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to seek to cross examine the Advocate Commissioner/Surveyor, if deemed necessary. Considering that the suit is of the year 2013, I hereby direct the learned Principal District Munsif, Jayamkondam to dispose of the suit within a period of four (4) months from the date of receipt of the report of the learned Advocate Commissioner. Connected Miscellaneous Petition is also closed. No costs.

14.07.2025

rkp

Index: Yes/No
Internet: Yes/No

To:

The Principal District Judge,
Jayamkondam.



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P.B.BALAJI, J.,

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**Pre-delivery order in
CRP. PD. No.736 of 2025
and CMP. No.4237 of 2025**

14.07.2025