



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 17.06.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.1056 of 2025
& CMP.No.6083 of 2025

1.P.Rajendran
2.P.Krishnamoorthy

... Petitioners

Vs.

1.Thangam
2.D.Malliga

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 11.12.2024 made in I.A.No.1 of 2022 in O.S.No.11 of 2022 on the file of the District Munsif Court, Bhavani, by allowing the Civil Revision Petition.

For Petitioners : M/s.M.Adhi Shree

For Respondents : Mr.C.R.Gokul Visvas for R2

ORDER

This Civil Revision Petition has been preferred, challenging the order dated 11.12.2024 made in I.A.No.1 of 2022 in O.S.No.11 of 2022 on the file of the District Munsif Court, Bhavani, dismissing the application seeking appointment of an Advocate Commissioner.



WEB COPY

2. Heard M/s.M.Adhi Shree, learned counsel for the petitioners and

Mr.Gokul Visvas, learned counsel for the 2nd respondent/caveator.

3.The learned counsel appearing for the petitioners would submit that in on earlier occasion, while the defendants had remained ex-parte, an application was taken out for appointment of an Advocate Commissioner and the same was allowed. When the Advocate Commissioner proceeded to inspect the property, the 2nd respondent was put on notice and the 2nd respondent did not object to the Advocate Commissioner proceeding to measure the suit property. She would therefore contend that subsequent to the ex-parte decree being set aside, when an application was taken out for appointment of an Advocate Commissioner, the said application was resisted without any substance and the Trial Court, on an erroneous consideration of the facts, has dismissed the said application. She would therefore pray for the Civil Revision Petition being allowed.

4.Per contra, the learned counsel appearing for the 2nd respondent would submit that the suit is for declaring the Sale Deed as null and void



WEB COPY

and in a suit of its nature, requirement of an Advocate Commissioner does not arise. He would further state that the petitioner wants the Advocate Commissioner to fix the eastern boundary to which serious objection is taken by the 2nd respondent.

5. Considering the arguments advanced by the learned counsel on either side, I find that the suit is not just for declaration, but also for a permanent injunction. In the plaint, there is a specific allegation of encroachment also. Therefore, a report of an Advocate Commissioner would certainly assist the Trial Court in adjudicating the disputed questions of fact. I am inclined to set aside the order passed by the Trial Court dismissing the application for appointment of an Advocate Commissioner. However, it is made clear that the Advocate Commissioner shall inspect the property and note the physical features and file a report with the Advocate Commissioner, taking the assistance of the local Taluk Surveyor. It is also made clear that during inspection, neither the Advocate Commissioner nor the local Taluk Surveyor, shall fix the boundaries which decision shall have to necessarily await a final decision in the suit, after the parties lead evidence in the suit and the Court decides the issues that arise for consideration.



WEB COPY

6. In the light of the above, the Civil Revision Petition is allowed. The order dated 11.12.2024 in I.A.No.1 of 2022 in O.S.No.11 of 2022 on the file of the District Munsif Court, Bhavani, is hereby set aside. The Trial Court shall appoint an Advocate Commissioner to inspect the property and file a report with regard to the physical features of the suit property. The Advocate Commissioner shall be entitled to take the assistance of the local Taluk Surveyor for inspecting the property and the inspection shall be carried out in the presence of the parties/their respective counsel. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

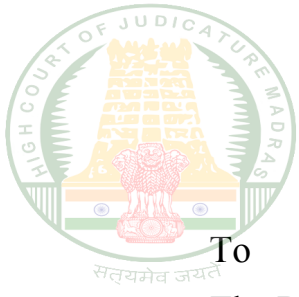
17.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

ata



To

The District Munsif Court, Bhavani.

WEB COPY



WEB COPY



P.B. BALAJI,J.

ata

CRP.No.1056 of 2025
& CMP.No.6083 of 2025

17.06.2025