



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Order reserved on : 17.09.2025

Order pronounced on : 26.09.2025

CORAM

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

CRP.No.1197 of 2023  
& CMP.No.8222 of 2023

Palanisami Gounder

... Petitioner

Vs.

Ramaswamy Gounder

... Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order and decreetal order dated 12.08.2022 made in E.A.No.45 of 2020 in E.P.No.16 of 2020 in O.S.No.180 of 2005 on the file of the District Munsif Court, Kangeyam.

For Petitioner : Mr.P.Dhanasekaran

For Respondent : Mrs.Vijayakumari Natarajan

**ORDER**

The decree holder in O.S.No.180 of 2005, aggrieved by the dismissal of E.A.No.45 of 2020 filed seeking appointment of an Advocate Commissioner, has come by way of this revision petition.

2.I have heard Mr.P.Dhanasekaran, learned counsel for the



petitioner/decreed holder and Mrs.Vijayakumari Natarajan, learned counsel  
for the respondent/1<sup>st</sup> judgment debtor.

WEB COPY

3.The learned counsel for the petitioner would state that the decreed holder had filed the suit in O.S.No.180 of 2005 for declaration and injunction and the suit was decreed. However, dissatisfied with the decreed granted in his favour, the plaintiff also filed A.S.No.20 of 2019 before the Sub Court, Kangeyam. The said appeal came to be dismissed, confirming the judgment and decreed of the trial Court.

4.According to the learned counsel for the petitioner, the judgment debtor has disobeyed the decreed in favour of the revision petitioner and hence, the petitioner was constrained to file the execution petition for arrest. In the said EP, an application has been taken out for appointment of an Advocate Commissioner with the help of a Surveyor to survey the lands as per the decreed passed in O.S.No.180 of 2005. It is the further contention of the learned counsel for the petitioner that the petitioner, pending litigation, has purchased adjoining lands as well and unless, an Advocate Commissioner is appointed to inspect the property and correlate the same with FMB, the Court will not be in a position to decide the execution



petition effectively.

WEB COPY

5.Per contra, the learned counsel for the respondent/1<sup>st</sup> judgment debtor would state that the plaintiff is attempting to re-agitate the very same issue that has been considered, not only by the Trial Court, but also the First Appellate Court. She would also invite my attention to the specific findings of the trial Court with regard to the portion of land which is now sought to be brought to the limelight by the decree holder and appointment of a Commissioner is sought for. She would refer to the trial Court specifically negating the contentions of the revision petitioner with regard to the said portion of land and despite a decree being passed in favour of the revision petitioner, she would contend that it was the revision petitioner who preferred the First Appeal and it is only in respect of the very same portion of the property which is now sought to be agitated in the execution petition. She would therefore state that the executing Court has rightly held that it cannot go behind the decree and nothing survives for re-inspection and the issue has already been decided not only by the trial Court, but also the First Appellate Court, and it is absolutely unnecessary for the executing Court to appoint a Commissioner, that too, in the execution petition that has been filed only for arrest of the judgment debtor.



WEB COPY

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

7.Admittedly, the revision petitioner filed a suit in O.S.No.180 of 2005. The said suit, after contest, came to be decreed in favour of the revision petitioner. Dissatisfied with the judgment and decree in his favour, the plaintiff preferred A.S.No.20 of 2019. The First Appellate Court did not see any merit in the appeal suit and dismissed the said appeal, confirming the judgment and decree of the trial Court. The matter has attained finality with the dismissal of A.S.No.20 of 2019 on 23.03.2020.

8.During trial of the suit, an Advocate Commissioner has been appointed and after inspecting the property, with the assistance of the Surveyor, he has filed a report, pointing out that there is a gap of 2.4 metres between the properties of the plaintiff and the 1<sup>st</sup> defendant and if S.No.153/12 is given as the boundary on the eastern side, then the 2.4 metres in excess lying between S.Nos.153/12 and 153/13 would add up to the plaintiff's extent, which would exceed the measurements mentioned even in the plaint, more specifically, the suit property. The Appellate Court has also



discussed the said issue elaborately and found that the plaintiff cannot take undue advantage of an excess gap of 2.4 metres to which the plaintiff is not entitled even as per the patta.

WEB COPY

9.Also, referring to the fact that the plaintiff has confined the relief to declaration to a specific length on all the four sides, the First Appellate Court found that the trial Court did not commit any error in restricting the decree to the measurements as projected by the plaintiff. Now the plaintiff seeks for appointment of Advocate Commissioner in the execution petition.

10.Firstly, I find that the execution petition has been filed, alleging violation of the decree in favour of the petitioner. It is for the petitioner to establish that the defendant/1<sup>st</sup> judgment debtor has violated the decree granted and that therefore, the 1<sup>st</sup> judgment debtor is liable to undergo imprisonment. In the said execution petition, the petitioner/decreed holder cannot reopen the issues that have already concluded finally before the trial Court and confirmed by the First Appellate Court, by seeking appointment of an Advocate Commissioner, that too, for the very same purposes which have already been elaborately dealt with by the trial Court as well as the First Appellate Court.



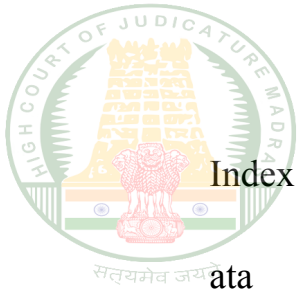
WEB COPY

11. In fact, both the Courts have had the benefit of the report of the Advocate Commissioner who in fact surveyed the lands only with the help of surveyor. Therefore, there is no useful purpose in once again appointing an Advocate Commissioner, that too, in order to decide the execution petition filed for arrest, alleging disobedience of the decree in favour of the revision petitioner. Rightly, the executing Court has found that the Court cannot go behind the decree and that the Advocate Commissioner need not be appointed in the present execution petition, which has been filed for arrest of the judgment debtor and that it is always open to the petitioner/decreed holder to establish that the respondent/1<sup>st</sup> judgment debtor has disobeyed or violated the decree and become entitled to the relief in the execution petition. I do not find that the findings arrived at by the executing Court are illegal or perverse, warranting interference in this revision.

12. In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

26.09.2025

Neutral Citation: Yes/No  
Speaking Order/Non-speaking Order



Index : Yes / No

ata

WEB COPY

To

The District Munsif Court, Kengeyam.



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

ata



WEB COPY



Pre-delivery order made in  
CRP.No.1197 of 2023  
& CMP.No.8222 of 2023

26.09.2025