



WEB COPY



CRP No.4941 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-10-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

**C.R.P.No.4941 of 2025
and C.M.P.No.24968 of 2025**

S.Sekar
S/o.Subbu Gounder
Kaspa, Agrahara Uduppam,
Agrahara Uduppam Village,
Namakkal District.

...Petitioner/
Plaintiff

vs.

1. R.P.Raja
S/o.Pandurangan

2. Malarkodi
W/o.R.P.Raja

... Respondents/
Defendants

PRAYER: Civil Revision Petition has been filed under Section Article 227 of the Constitution of India praying to

a) set aside the 'Dismissal Order and Decree', passed by the Principal District Munsif, Namakkal in I.A.No.2 of 2023 on 20.06.202 in O.S.No.27 of 2023, which suit is now pending before the same.

b) pass such or other orders that this Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner(s): Mr.S.Govindarajulu

ORDER



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The unsuccessful plaintiff has preferred this revision petition. The suit in O.S.No.27 of 2023 was filed for permanent injunction against one R.P.Raja/D1 and Malarkodi/D2. The plaintiff has filed an application in I.A.No. 2 of 2023 in O.S.No.27 of 2023 under Order XXVI Rule 9 r/w. Section 151 CPC to appoint an Advocate Commissioner to visit the suit schedule property to note down the physical features and to file a report. Upon hearing either side, the Court below, vide order dated 20.06.2024, dismissed the application on the ground that in a suit for permanent injunction, it is not necessary to appoint an advocate commissioner to ascertain the factum of possession of the plaintiff, which amounts to collection of evidence. Aggrieved over the same, the present civil revision petition has been filed.

2. Learned counsel appearing for the revision petitioner would submit that the issue of possession can be decided only on the basis of evidences and documents, whereas the issue of present petition regarding encroachment/ overlapping of the boundaries and their demarcation, which is to be decided on the basis of the report submitted by the advocate commissioner. Therefore, dismissing the application by the Court below is against law. Further, he would submit that the Court



below had committed a narrow approach as against the lawful prayer of the plaintiff by sticking on the misconception that the appointment of advocate commissioner could help only the parties to collect/gather evidence for their favour. It is further submitted that the appointment of advocate commissioner is sought only for identifying the proper boundaries of the suit schedule properties and of their demarcation and also to note down physical features, topography regarding the exact location and determining the disputed location, especially when oral evidences are insufficient to provide clarity.

3. It is seen from the records that the suit was filed for permanent injunction. The defendants have also filed the written statement. While referring to the documents listed in the plaint, which included the sale deed dated 12.03.1952 which was executed in favour of the plaintiff's paternal grandfather, Kandappa Gounder, under which the ancestral properties which included the land forming the part of suit property were purchased. After his demise, the said property were enjoyed jointly by his son Subbu Gounder, his wife Muthayi and their sons, Sekar and Senthil, who subsequently executed a registered partition deed dated 30.06.1994, which divided the family property among themselves whereby the suit



property described as item No.11 in Schedule – B was allotted to the plaintiff. It was further seen that the predecessors of defendant, Sengoda Gounder had purchased certain properties including the Well mentioned in the suit schedule property under the sale deed dated 29.08.1954 and thereafter, the second defendant purchased the said properties from the family of Sengoda Gounder under another sale deed dated 15.03.2013.

4. At this juncture, it may be apposite to cite the judgment of this Court in ***Krishnamurthy, T.K. v. Tamil Nadu Water and Drainage Board, reported in 2006 (5) CTC 178***, wherein, it has been observed that Advocate-Commissioner should not be appointed to gather evidence to prove the case of parties, since the parties should prove their case by letting in legally acceptable evidence and the report of the Advocate Commissioner can only aid the Court in evaluating the evidence to come to just conclusion. Yet another judgment of this Court in ***Minor Amid Stance & another v. Lakshmiammal & others, reported in CDJ 2009 MHC 324***, wherein, it has been observed that the factum of possession cannot be ascertained by Commissioner, as the same could be proved by letting in oral and documentary evidence by the parties before the Court.



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5. In a suit for permanent injunction, the burden of proof lies on the plaintiff to prove his case. It is well settled that the advocate commissioner cannot be appointed to collect the evidence of the parties to decide their case. The appointment of advocate commissioner will assist the Court to adjudicate the issue between the parties. In the case at hand, the relief sought for in the suit seeking of permanent injunction, it is for the revision petitioner/plaintiff to establish his case by providing necessary documentary and oral evidence. The Court below, upon considering the nature of the relief sought for in the suit, held that the advocate commissioner cannot be appointed to collect the evidence of the parties to establish their case. There is no reason warranting interference with the order of the Court below.

6. Accordingly, CRP No.4941 of 2025 is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.10.2025

Index :Yes/No
Internet
:Yes/No

M.JOTHIRAMAN J.



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To
The Principal District Munsif,
Namakkal

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