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CRP. No.2935 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.07.2025**

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP. No.2935 of 2025

and CMP. No.16538 of 2025

M/s.Angalamman Enterprises
Rep by its Proprietor,
Mr.S.Arunkumar

Petitioner(s)

Vs

M/s.Tanny Shelters Private Limited,
Rep by its Senior Manger,
N.Ganapathy Subramaniam

Respondent(s)

PRAYER: This Civil Revision Petition under Article 227 of the Constitution of India, to set aside the order 03.06.2025 passed in I.A. No.5 of 2025 in O.S. No.318 of 2025 on the file of the 1st Additional District Judge of Coimbatore.

For Petitioner : Mr.P.Kavin Prabhu

For Respondent : Mr.P.V.Balasubramanian,
Senior Counsel,
M/s.Tamizh Law Firm

ORDER

The revision petitioner, aggrieved by dismissal of I.A. No.5 of 2025 which has been filed seeking appointment of an Advocate Commissioner has come forward with the present revision petition.

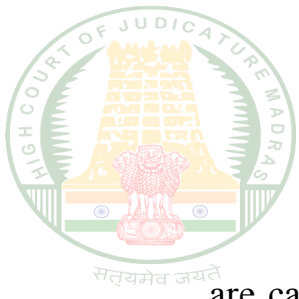


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2. I have heard Mr.P.Kavin Prabhu, learned counsel for the petitioner and Mr.P.V.Balasubramanian, learned Senior Counsel for M/s.Tamizh Law Firm, appearing for the Caveator/respondent.

3. The learned counsel for the petitioner would submit that the Trial Court has dismissed the Application seeking appointment of Commissioner without appreciating the peculiar facts and circumstances of the case. According to the learned counsel for the petitioner, though the petitioner had completed certain amount of works, payments were not released by the respondent and according to the learned counsel for the petitioner, more than a sum of Rs.76 lakhs is due and payable to the petitioner.

4. It is the further contention of the petitioner that without settling the dues of the revision petitioner, the respondent, on the contrary, not only denied the petitioner to access the site but also commenced construction activities by third party which will seriously prejudice the interest of the revision petitioner.



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5. The learned counsel for the petitioner states that if further works are carried out, then the Court will not be in a position to appreciate or ascertain the value of the work that has been completed by the revision petitioner, in order to arrive at the amount which is due and payable to the revision petitioner. The learned counsel for the petitioner would therefore pray for the revision being allowed and the order of the Trial Court being set aside and consequently, directing an Advocate Commissioner to be appointed as prayed for, to note down the physical features and ascertain the value of construction with the help of PWD Engineer and file necessary report, together with photographs.

6. Per contra, the learned Senior Counsel Mr.P.V.Balasubramanian, appearing for the Caveator/respondent would submit that the revision petitioner is the defendant in a suit for permanent injunction which has been filed by the respondent, as plaintiff, seeking the relief of bare permanent injunction to restrain the revision petitioner from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also to restrain the revision petitioner from obstructing the construction work being carried out from the plaintiff. The learned



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Senior Counsel would therefore state that in the present suit there was no necessity especially, considering the nature of relief sought for, to appoint an Advocate Commissioner and the Trial Court has rightly dismissed the Application. The learned Senior Counsel would therefore state that no interference is warranted with the order of the Trial Court.

7. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the pleadings enclosed by way of typed set of papers including the order impugned in the present revision petition.

8. The suit is filed by the respondent herein for an injunction on the strength of the plaint allegations that the plaintiff is in possession and the defendant is attempting to interfere with the plaintiff's possession and also obstructing the construction work that is being carried on by the plaintiff. It is the case of the defendant that the defendant has already carried out work in respect of which payments are still due and payable to the defendant and therefore, in order to ascertain the value of the work completed by the defendant, the Application for appointment of



Advocate Commissioner has been filed.

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9. As rightly contended by the learned Senior Counsel, Mr.P.V.Balasubramanian in a suit for bare injunction, that too filed by the respondent/plaintiff, I do not see, how the report of the Advocate Commissioner to ascertain the value of the work is going to assist the Court in adjudicating the issues that arise for consideration in the present suit. The suit being one for bare injunction, the scope of trial would be revolving around whether the plaintiff is in possession as alleged by the plaintiff. If at all, the defendant had filed a suit for recovery of money allegedly due and payable to him and in that suit, an Application of this nature, was taken out, to ascertain the value of the work completed by the revision petitioner, then it may have been improper if the Court had refused such an Application for appointment of an Advocate Commissioner. However in a suit filed by the respondent, I do not see any requirement for appointing an Advocate Commissioner and the report as required by the revision petitioner is not going to be of any assistance to the Court, in deciding the issue that arise for consideration in the suit.



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P.B.BALAJI, J.,

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10. Independently I have also gone through the order of the Trial Court. The Trial Court has found that the revision petitioner has not even stated the details of work done or materials purchased for construction and provided any proof for estimated costs of construction and that the Commissioner cannot be appointed for collection of evidence. I do not find any illegality or perversity in the findings arrived at by the Trial Court warranting interference under Article 227 of the Constitution of India.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Connected Miscellaneous Petition is dismissed.

15.07.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The 1st Additional District Judge,
Coimbatore.

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