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CRP. No.3208 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.08.2025

Pronounced on:14.08.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI
CRP. No.3208 of 2025
and CMP. No.17782 of 2025

1.V.Chandrasekaran
2.V.Gunasekaran

Petitioners

Vs

1.Seenuvasan @ SS.Vasan

2.The Sub Registrar,
Hospital Road,
Tirukovilur,
Kallakurichi District.

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decree in I.A. No.398 of 2024 in O.S. No.253 of 2024 dated 30.06.2025 on the file of the Sub Court, Tirukovilur.

For Petitioner : Mr.Himavanth

For Respondents : Mr.Murugendran for
Mr.H.Rajesh for R1
Mr.N.Muthvel,
Government Advocate for R2

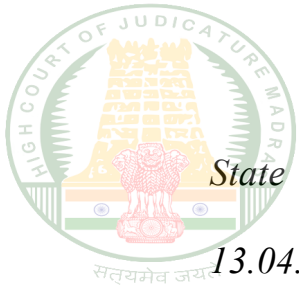


ORDER

The Revision Petitioners are defendants 1 and 2, aggrieved by the order of appointment of an Advocate Commissioner, at the instance of the plaintiff have filed the present revision petition.

2. I have heard Mr.M.Himavanth, learned counsel for the petitioner, Mr.Murugendran, for Mr.H.Rajesh, learned counsel for the first respondent and Mr.N.Muthuvel, learned Government Advocate for the second respondent.

3. The learned counsel for the revision petitioner, Mr.M.Himavanth, would submit that the Trial Court has erroneously appointed an Advocate Commissioner when the plaintiff had specifically sought for such appointment to establish factum of his possession in the suit property. He would therefore state that the order of the Trial Court is wholly unsustainable and is liable to be set aside. The learned counsel for the petitioner also places reliance on the orders of this Court in (i) *S.Anand and others vs A.Jeyabalan and others, in CRP (PD)(MD).No.970 of 2012 dated 26.09.2019* and (ii) *Sujatha vs The*



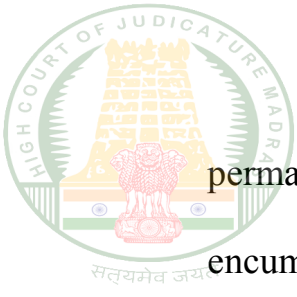
State of Tamil Nadu and others, in CRP (MD).No. 863 of 2023 dated 13.04.2023.

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4. Per contra, Mr.Murugendran, learned counsel for the contesting first respondent, would submit that the Trial Court has rightly appointed an Advocate Commissioner to ascertain the physical features and the appointment is not for any fact-finding mission regarding possession of the property. The learned counsel would place reliance on the judgment in (i) *R.Manoharan and others vs. S.Ramakrishnan and others in SA.No.1024 of 2013 dated 29.03.2022*, (ii) *Ganeshan and others vs L.Krishnan and another in CRP.No. 279 of 2019 dated 10.08.2022* and (iii) *B. Amutha v. Anandhi Sankara Narayanan*, reported in (2016) 03 *MWN (Civil) 614*.

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

6. The plaintiff has filed the suit for a declaration of his title in respect of the suit property. The plaintiff has also sought for a relief of



permanent injunction to restrain the defendant from in any manner encumbering the suit property. In such a suit, the plaintiff has taken out an Application for appointment of an Advocate Commissioner. In the affidavit filed in support of the application for appointment of Advocate Commissioner, the plaintiff has contended that the subject lands were originally grama natham poramboku lands and that the plaintiff has been in physical possession and enjoyment of the suit property for about 33 years and therefore seeks to assert his title by way of adverse possession.

7. With regard to the necessity to appoint an Advocate Commissioner, the only paragraph in the entire affidavit is that in order to ascertain the true position of the suit property, a Commissioner has to be appointed and that it would expedite the disposal of the suit. The Trial Court has allowed this application as against which the defendants are before this Court.

8. As rightly pointed out by Mr.M.Himavanth, in a suit for declaration of title and for a relief of permanent injunction to restrain the defendant from encumbering the suit property, there is no purpose in



appointing an Advocate Commissioner. The report of the said Advocate Commissioner is not going to assist the Court in deciding the issues that arise for consideration based on the reliefs that have been prayed for by the plaintiff.

9. The defendants, even in the written statement have denied the claim of adverse possession set up by the plaintiff and therefore, the issue of whether possession is with the plaintiff is a contentious issue before the Trial Court. It is for the plaintiff to establish the plaint averments and allegations and make out a case that the plaintiff is in physical possession of the suit property. Even in the affidavit filed in support of the application for appointment of Commissioner, as already discussed herein above, I do not find that the plaintiff has made out a sufficient cause for appointment of an Advocate Commissioner, except for stating that if the Commissioner is appointed, the true position with regard to the suit property will come to light.

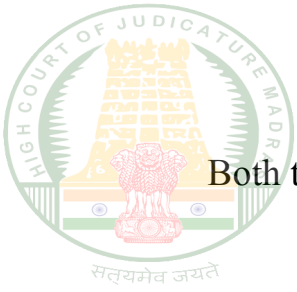
10. It is for the plaintiff to establish the factum of the plaintiff being in possession and that his possession has become adverse and



consequently entitling him to a decree as prayed for. The defendants/
revision petitioners have specifically denied even in the written statement
that the plaintiff has not been in possession of the suit property at any
point of time and the question of adverse possession does not arise.

11. Coming to the decisions that have been relied on by the learned
counsel on either side, in *S. Anand's* case, (referred herein supra), this
Court held that appointment of a Commissioner to note down whether
there are standing crops in the property would indirectly amount to
finding out who is in possession of the property, besides collecting
evidence and set aside the order of appointment of the Advocate
Commissioner by the Trial Court.

12. In *Sujatha's case*, (referred herein supra), this Court, in a very
similar circumstance where the petitioner was attempting to protect title
by virtue of claim of adverse possession, held that the petitioner has to let
in evidence, oral and documentary to establish the claim of adverse
possession and cannot expect the Court to come to the aid of the
petitioner to collect evidence by appointing an Advocate Commissioner.



Both these decisions would apply to the facts of the present case.

WEB COPY 13. In ***Manoharan's case***, (referred herein supra), this Court held that the Court should have appointed a Commissioner to ascertain whether the wall is falling within the suit property. However, though this decision is relied on by the counsel for the plaintiff, I find that it was a case where the Courts below had concurrently found that the plaintiffs have established their right, title and possession over the suit property and under such circumstances found fault with the Courts for not appointing an Advocate Commissioner to ascertain whether the disputed wall was falling within the suit property. I do not see how this decision will help the plaintiff, as, in the present case, the plaintiff is yet to establish his right, title as well as possession.

14. In ***Ganeshan's case***, (referred herein supra), this Court finding that possession of the petitioners was not in dispute and since the parties only denied the lie and location of disputed construction, held that Commissioner has to be necessarily appointed. This decision would also not apply to the facts of the present case.



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15. In *Amutha's case*, (referred herein supra), this Court set aside the order of Trial Court refusing to appoint an Advocate Commissioner, finding that the inspection and report would be helpful to the Court in deciding the dispute and a local investigation is the best way to find out the position. However, even the said decision was rendered in the backdrop of the factual matrix regarding the dispute being with regard to identity of property in the litigation. Therefore, this decision also will not come to the aid of the plaintiff.

16. The Trial Court has appointed an Advocate Commissioner, observing that no prejudice would be caused to the defendants and only on the ground that the appointment of the Commissioner was in the interest of justice. The Trial Court failed to see that when the plaintiff has alleged and claimed to be in physical possession, that too setting up adverse possession in his favour and the defendants having categorically denied even the question of factum of possession being with the plaintiff, the Trial Court should have not entertained the Application for appointment of the Commissioner and instead ought to have directed the



parties to establish their respective contentions at trial.

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17. In the light of the above, I am inclined to set aside the order of the Trial Court in I.A. No.398 of 2024 in O.S. No.253 of 2024. Accordingly, this Civil Revision Petition is allowed. Consequently, Connected Miscellaneous Petition is closed. No costs.

14.08.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Sub Judge,
Tirukovilur.



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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.3208 of 2025
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