



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.08.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI
CRP.No.3622 of 2025
& CMP.No.19515 of 2025

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A.Alagesan

... Petitioner

Vs.

1.Valliammal

2.R.Geetha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 14.07.2025 passed in I.A.No.2 of 2023 in O.S.No.1281 of 2023, on the file of the learned I Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.A.Irfan Sherif

For Respondents : Mr.L.Mouli

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents.



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2. The second defendant, aggrieved by the order appointing an Advocate Commissioner at the instance of the plaintiff, is before this Court.

3. The learned counsel for the petitioner would invite my attention to the fact that earlier the plaintiff had filed a suit for a bare injunction, which was dismissed on 05.10.2017, holding that the plaintiff had failed to prove possession of the suit property and consequently was not entitled to permanent injunction.

4. The learned counsel further states that, suppressing even the factum of filing of the said suit, let alone the adverse decree passed against the respondent/plaintiff, the present suit has been filed as if the plaintiff continues to be in physical possession, alleging encroachment made by the revision petitioner.

5. He further states that indirectly, the petitioners are attempting to collect evidence. Though the application only states that the Commissioner has to note down the physical features of the suit property, especially since



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the allegations of the plaintiff are that the defendants have encroached on the property after removing the bund, which was found on the north-south of the western side, he therefore states that the appointment of the Advocate Commissioner is clearly a disguised attempt to collect evidence regarding possession for the main suit.

6. However, the learned counsel for the respondents states that the Trial Court has made it clear that the attempt to have an Advocate Commissioner to inspect the property is not to gather evidence for the suit but only to note down the physical features. Taking me through the impugned order in the revision, the learned counsel for the respondents states that no prejudice would be caused if the Advocate Commissioner files a report regarding the physical features of the property. He also states that the revision petitioner himself has filed a suit for permanent injunction and therefore, it would be in the interest of both parties if the Court has the assistance of the Advocate Commissioner's report. He therefore prays for the order appointing the Advocate Commissioner to be affirmed in the revision petition.



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7. I have carefully considered the submissions made on both sides.

8. Even in the application seeking appointment of an Advocate Commissioner, I find that the petitioner states that he is in possession of the suit property and that the defendants have encroached into a portion of the property after removing the boundary stones that were fixed and the bund that existed in the said location. The very same averments were made in the earlier suit. I find that the allegations made by the plaintiff were that the defendant was trying to trespass into the plaintiff's property and illegally put up fencing.

9. The said suit, no doubt, as rightly pointed out by the learned counsel for the respondents, was dismissed, finding that the plaintiff will have to seek a declaration in order to remove the cloud on title. However, the Trial Court did not stop with such findings. The Trial Court further proceeded to render a finding that the plaintiff did not prove possession and consequently was not entitled to the relief of permanent injunction.



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10. While so, the plaintiff, not having challenged the said findings and having chosen to file a fresh suit for declaration with consequential prayer, is now seeking the appointment of an Advocate Commissioner. In the said application, it is stated that the respondents has encroached after removing the boundary stones in the plaintiff's property, and that it is difficult for the plaintiff to ascertain the actual extent of the property in order to cultivate the same. The case of the petitioner is that the exercise to measure the property and fix boundary stones has also been prevented by the defendants, and therefore the Advocate Commissioner has to necessarily file a report after taking the assistance of the Taluk Surveyor to measure the property and fix the boundary stones.

11. The learned counsel for the revision petitioner states that, insofar as the relief of declaration being sought in the plaint, the relief of possession is incidental and would follow in the event of the plaintiff ultimately succeeding in establishing his title. He therefore states that there is no necessity for an Advocate Commissioner to inspect the property and file a report.



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12. I find force in the submission made by the learned counsel for the revision petitioner. The averments set out in the affidavit in support of the application for appointment of an Advocate Commissioner also suggest that the plaintiff only intends to take the aid of the Court process to ascertain the four boundaries of the property and thereby establish his physical possession. It is settled law that an Advocate Commissioner cannot be appointed to find out who is in possession of the property.

13. In the light of the fact that there is a prayer for declaration, and ultimately if the plaintiff succeeds in establishing title to the suit property, the relief of mandatory injunction would consequently follow, the plaintiff would be entitled to the other reliefs sought for.

14. I do not find that appointment of an Advocate Commissioner is going to assist the Trial Court in adjudicating the issues which revolve around the title to the suit property.

15. In view of the findings of the Trial Court in the earlier suit in O.S.No.2211 of 2009, which ended in favour of the revision petitioner and



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against the plaintiff, holding that the plaintiff failed to establish his possession and considering the relief sought for in the present suit, I am unable to sustain the order of the Trial Court appointing an Advocate Commissioner even before the parties lead oral and documentary evidence. However, considering that the plaintiff seeks to declare himself as the owner of the alleged encroached portion of 3 feet by 160 feet on the western side of the suit property, in the event the Trial Court requires the assistance of a report to ascertain the same after parties lead oral and documentary evidence, it shall be open to the Trial Court to *suo motu* appoint an Advocate Commissioner for enabling the Court to adjudicate Relief 'A', which pertains only to the said portion. At the present stage namely, when only pleadings are complete and even issues have not been framed, the exercise of appointing an Advocate Commissioner would certainly amount to enabling the plaintiff to gather evidence with regard to possession of the suit property.

16. Therefore, I am inclined to set aside the findings of the Trial Court. The order appointing an Advocate Commissioner in I.A.No.2 of 2023 is set aside. It shall be open to the Trial Court to appoint an Advocate Commissioner after the trial is concluded, in the event the Court requires the



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assistance of an Advocate Commissioner with regard to identification of the suit property, more specifically the alleged encroached portion of 3 feet by 160 feet.

17. With the above observations, this Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

12.08.2025

Speaking/Non-speaking : Yes/No
Index : Yes / No
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To
The learned I Additional Subordinate Judge, Coimbatore.

P.B. BALAJI, J.



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