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CRP.No.4297 of 2025 and C.M.P.No.22041 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4297 of 2025

and

CMP.No.22041 of 2025

Vilwanathan @ Viswanathan

S/o. Kasinathan,

represented by its Manager of the Family,

Keezhatheru, Main Road,

Muttuvancherry Village,

Ambapur Madura, Udayarpalayam Madura,

Ariyalur District.

... Petitioner / Petitioner / Plaintiff

Versus

1. Paramasivam

2. Chandrasekar

3. Gunasekaran

... Respondents / Respondents /
Defendants

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 23.08.2024 made in I.A.No.03 of 2023 in O.S.No.48 of 2023 on the file of the District Munsif Court, Jayankondam and to allow the petition.

For Petitioner

: Mr. M.Senthil Vadivu

ORDER



Unsuccessful plaintiff has preferred the present Civil Revision
Petition.

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2. The suit in O.S.No.48 of 2023 has been filed seeking a declaration and a permanent injunction. After filing the written statement, the necessary issues were framed. Thereafter, the matter was posted for trial. At this stage, the plaintiff filed an application in I.A.No.03 of 2023 in O.S.No.48 of 2023 under Order XXVI Rule 9 of the CPC, seeking the appointment of an Advocate Commissioner to inspect the suit property with the assistance of a surveyor, identify its physical features, determine any errors in the FMB and Chitta, and submit a plan along with a report. Upon hearing either side, the Court below dismissed the application on the ground that an Advocate Commissioner cannot be appointed to collect the evidence. Aggrieved over the same, the plaintiff has preferred the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner would submit that on eastern side of the suit property, to an extent of 230 sq.meters, comprised in survey Nos.480 /35 and 480/36, is an ancestral joint family property of the revision petitioner's father, Kasinathan, and the first



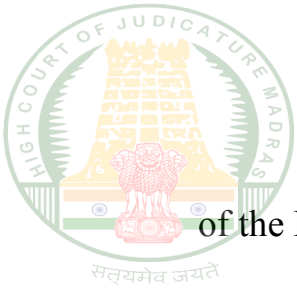
respondent's father, Chokalingam. After their demise, the revision petitioner and his brother inherited their father's share, and they have been in possession and enjoyment of the same. The learned counsel further submits that a plan was filed along with the plaint showing that the southern side of the suit property, to an extent of 230 sq.meters, was equally divided (115 sq.meters each), and the same has been enjoyed by the first respondent and the revision petitioner, respectively. To ascertain this aspect, the appointment of an Advocate Commissioner is necessary. Without considering the same, an application has been filed to rectify an error in the FMB relating to the southern side of the suit property, particularly concerning the extent enjoyed by the parties. The learned counsel further submits that the suit was also filed seeking a declaration that the settlement deed dated 08.07.2022 is null and void. Based on the erroneous revenue records, the respondents are attempting to alter the physical features and disturb the petitioner's peaceful possession. Therefore, the revision petitioner filed an interlocutory application for the appointment of an Advocate Commissioner to inspect the suit property with the assistance of a surveyor, identify the physical features, determine the errors in the FMD and Chitta, and submit a detailed report and plan.



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4. It is seen from the records that the suit has been filed seeking a declaration of title to the suit property and, for a permanent injunction. In the plaint, the suit schedule property is described as which is situated in Udayarpalayam Village, Old Natham Survey No. 195/1, measuring 5.6 meters on the Southern side and 14.6 meters on the norther side, and New Natham Survey nos.480/35 (103 sq.meters) and 480/36 (163 sq.meters), having a constructed house. It is well settled that Advocate Commissioner should not be appointed to gather evidence to prove the case of the parties. Since the parties should prove their case by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to just conclusion (***Krishnamurthy, T.K. vs. Tamil Nadu Water and Drainage Board***, reported in ***2006(5) CTC 178***). It is to be noted that the factum of possession can not be ascertained by Commissioner, as the same could be proved by letting in oral and documentary evidence by the parties before the Court.

5. In view of the above, there is no reason to interfere with the order passed in I.A.No.3 of 2023 in O.S.No.48 of 2023, dated 23.08.202 on the file



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of the District Munsif Court, Jayankondam.

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6. Accordingly, this Civil Revision petition is dismissed. Consequently, connected civil miscellaneous petition is closed. No costs.

11.09.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The District Munsif Court, Jayankondam

M. JOTHIRAMAN, J.

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