



CRP.No.3822 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 19.06.2025

Order pronounced on : 04.07.2025

CORAM

**THE HON'BLE MR. JUSTICE P.B.BALAJI**

CRP.No.3822 of 2023  
& CMP.No.23667 of 2023

1.Periasamy  
2.Chinnamuthi  
3.P.Selvamani  
4.Pachiammal  
5.Dhanam  
6.Palaniammal

..Petitioners

Vs.

1.K.Boopalan  
2.Deivamani

3.The Village Administrative Officer,  
Bukkampattu Village,  
Mettur Taluk,  
Salem District – 636 451.

4.The Tahsildar,  
Taluk Office, Mettur,  
Mettur Taluk,  
Salem District – 636 401.

5.The Revenue Divisional Officer,  
Mettur Dam,  
Mettur Taluk,  
Salem District – 636 401.



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6.The District Collector,  
Collectorate,  
Salem District – 636 001.

..Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14.08.2023 passed in I.A.No.4 of 2022 in O.S.No.6 of 2019 on the file of the District Munsif, Mettur.

For Petitioners : Mr.S.R.Karthikeyan

For Respondents : Mr.V.Elangovan for R1

Mr.A.Anandan  
Government Advocate for RR3 to 6

No appearance for R2

### **ORDER**

The Civil Revision Petition has been filed challenging the order order dated 14.08.2023 passed in I.A.No.4 of 2022 in O.S.No.6 of 2019 on the file of the District Munsif, Mettur.

2.The revision petitioners are the defendants in O.S.No.6 of 2019 before the District Munsif Court, Mettur. The suit has been filed by the 1<sup>st</sup> respondent as plaintiff, for the relief of declaration of title and consequential injunction and other reliefs pertaining to the property comprised in S.No.118/4B, New S.No.118/4B3B, measuring 2 cents, which has been set out in schedule 'B' of



the plaint. The plaintiff filed an application in I.A.No.4 of 2022 for appointment of an Advocate Commissioner. The said application was resisted by the revision petitioners by filing a detailed counter and also marking documents vide Ex.R1 to R5. The Trial Court has proceeded to allow the application for appointment of Advocate Commissioner, as against which the present revision has been filed before this Court.

3.I have heard Mr.S.R.Karthikeyan, learned counsel for the petitioner, Mr.V.Elangovan, learned counsel for the 1<sup>st</sup> respondent and Mr.A.Anandan, learned Government Advocate for the respondents 3 to 6.

4.The learned counsel for the petitioner would submit that the Trial Court has erroneously allowed the application for appointment of Advocate Commissioner, disregarding the fact that the plaintiff has earlier filed a suit against the petitioners and other legal heirs in O.S.No.183 of 2001 in respect of the property comprised in S.No.118/2 in the same Village. In the said suit, the allegations made by the 1<sup>st</sup> respondent was that the revision petitioners and other legal heirs were disturbing his peaceful possession and enjoyment and an Advocate Commissioner was appointed in the said suit and report and rough sketch have also been filed. Thereafter, the plaintiff filed an application in



I.A.No.137 of 2003 in the said suit to include the property in S.No.118/4

measuring 2 cents, which according to the revision petitioners, is a cart track, which is situate in the land belonging to the petitioners and the 1<sup>st</sup> respondent as plaintiff. The said application for amendment was allowed by the Trial Court. However, subsequently, the suit came to be dismissed for default and it was restored after lapse of three years. Thereafter, the plaintiff has filed one more amendment application, seeking the relief of declaration and recovery of possession with regard to S.No.118/4 (2 cents). The said application came to be dismissed, pursuant to which the 1<sup>st</sup> respondent withdrew the suit on 06.08.2010 and after lapse of nine years, he has chosen to file the present suit, suppressing the earlier proceedings.

5.The learned counsel for the revision petitioners would further state that in respect of very same property, the earlier suit was filed and the same was withdrawn and now the present vexatious suit has been filed, which has been hotly contested by the revision petitioners. He would further contend that the Trial Court failed to see that the Advocate Commissioner's report filed in the earlier proceedings was also brought to the notice of the Trial Court and without considering the same, the Trial Court has allowed the application for appointment of an Advocate Commissioner. He would therefore pray for the



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revision being allowed.

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6.Per contra, the learned counsel for the 1<sup>st</sup> respondent would state that the Trial Court has rightly allowed the application for appointment of an Advocate Commissioner, finding it necessary that a report of the Advocate Commissioner would be of invaluable assistance to adjudicate the proceedings in the suit. He would therefore state that when the Trial Court exercised its jurisdiction in entertaining the application, no grounds are made out for interference by this Court, under Article 227 of Constitution of India.

7.I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the order that is under challenge in the present revision.

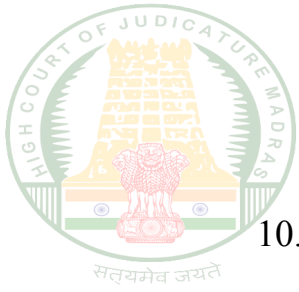
8.The contention of the revision petitioners is that the petitioners have suppressed the factum of the earlier suit in respect of the very same properties and moreover, an Advocate Commissioner has also been appointed in the earlier suit and his report has also been filed before the Court. Under such circumstances, another application for appointment of Advocate Commissioner cannot be allowed in a second suit in respect of the very same property. The



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Trial Court considered that there was an earlier suit and an Advocate Commissioner was appointed and he has also filed his report and that subsequently, the suit was withdrawn and the present suit has been filed. However, the Trial Court has found that the survey number, in respect of which, the present application for appointment of Advocate Commissioner is sought for is in respect of schedule B comprised in S.No.118/4B and New S.No.118/4B3B, whereas in the earlier suit the Advocate Commissioner warrant was only in respect of S.No.118/2.

9.The Trial Court also held that merely because in an earlier suit, the report of the Advocate commissioner was available, there is no bar for the party to seek appointment of an Advocate Commissioner afresh, especially when it pertains to a different survey number altogether. The Trial court clearly found that the report of the Advocate Commissioner would be necessary for the Court to correctly adjudicate the issue as to the existence of the common pathway. When the Trial Court has exercised judicial discretion in a proper manner and it is seen that such discretion is not improper or perverse, then the scope of interference under Article 227 of Constitution of India is very limited. Having found that the Trial Court has given valid and acceptable reasons for appointing the Advocate Commissioner, I do not find any merit to entertain the revision.



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10.In fine, the Civil Revision Petition is dismissed. There shall be no

order as to costs. Connected Civil Miscellaneous Petition is closed.

04.07.2025

Speaking/Non-speaking order

Index : Yes/No

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To

The District Munsif, Mettur.

**P.B.BALAJI.J,**



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Pre-delivery order made in  
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