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CRP No. 4187 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-09-2025

CORAM

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

**CRP No. 4187 of 2025 and
CMP NO. 21515 OF 2025**

M.Sampathkumar,
S/o.Muthusamy Gounder,
961, Thalathurai, Bogalur Village,
Annur Taluk, Coimbatore District.

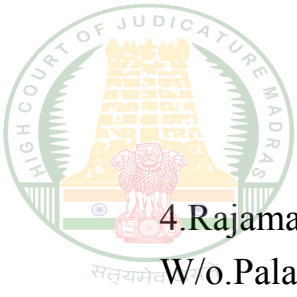
Petitioner

Vs

1. Gurusamy,
S/o.Devanna Gounder,
Residing at Gandhi Thottam,
Thalathurai, Pogalur Village,
Annur Taluk, Coimbatore District.

2.Poovathal,
W/o.Muthusamy,
Residing at Gandhi Thottam,
Thalathurai, Pogalur Village,
Annur Taluk, Coimbatore District.

3.Radhmani,
D/o.Muthusamy,
Residing at Gandhi Thottam,
Thalathurai, Pogalur Village,
Annur Taluk, Coimbatore District.



4.Rajamani,

W/o.Palanisamy,

Residing at Gandhi Thottam,
Thalathurai, Pogalur Village, Annur
Taluk, Coimbatore District.

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.6.2025 made in I.A.No.3 of 2024 in A.S.No.34 of 2022 on the file of the Additional Sub Court, Coimbatore.

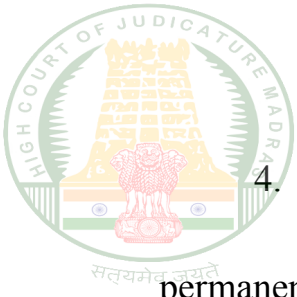
For Petitioner(s): Mr. N. Manoharan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order dated 12.6.2025 made in I.A.No.3 of 2024 in A.S.No.34 of 2022 on the file of the Additional Sub Court, Coimbatore.

2. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

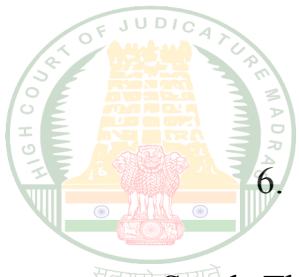
3. The unsuccessful fifth defendant has preferred this civil revision petition.



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4. The suit has been filed by one Mr.Gurusamy seeking relief of permanent injunction restraining the defendants, their servants, hirelings and family members from interfering with the plaintiff's peaceful use and enjoyment of the suit cart track described in B schedule property for having access to the A schedule property in the manner known to law. The defendants have contested the suit and filed their written statement. After due trial, the suit was decreed on 24.9.2018 as prayed for by the plaintiff. Aggrieved by the same, the fifth defendant has preferred the first appeal before the Sub Court, Coimbatore in A.S.No.34 of 2022 and the same is pending for adjudication.

5. It is seen from the plaint in O.S.No.1645 of 2013, two schedule properties were mentioned. Further, it has also been mentioned that the suit A schedule property is bounded by S.F.No.489/1 on the North 487 on the West 491, 492 and 493 on the East 518, 517 and 514 on the South with two wells and three bore wells and a residential garden house, cattle shed and coconut trees in the appurtenant right to enjoy the common cart described in B schedule which has been described as follows:



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6. The East West and North South cart track running from the North South Thallakkarai road on the West up to the A schedule properties, on the North East on the Western and Northern side of S.F.No.487 in a breadth of 6 cubits or 9 feet totally measuring 3 cents shown in red colour which has been enclosed along with the plaint plan.

7. While pending the aforesaid first appeal in A.S.No.34 of 2022, the revision petitioner/fifth defendant has filed an application under Order XXVI Rule 9 of the C.P.C., in I.A.No.3 of 2024 in A.S.No.34 of 2022 before the learned III Additional Subordinate Judge, Coimbatore, seeking to appoint an Advocate Commissioner to visit the said suit schedule properties with the help of a photographer to take photographs and videos through drone camera and place the report along with the plan before the Court below. In the said application, the plaintiff filed the counter and objected for the same. Upon considering the submission made by the learned counsel on either side, the Court below dismissed the said application on the ground that the revision petitioner had already filed an application to appoint an Advocate Commissioner to visit the suit schedule properties before the trial Court and the



same was dismissed by the trial Court and the revision petitioner has not chosen to challenge the same. Hence, the second application filed by the revision petitioner seeking for appointment of Advocate Commissioner is not sustainable.

8. Learned counsel appearing for the petitioner submitted that in a suit for bare injunction, it is just and necessary to appoint an Advocate Commissioner to verify the physical features of the suit schedule properties and the same will be helpful to the Court to decide the dispute between the parties. He further submitted that the second application filed by the revision petitioner to appoint an Advocate Commissioner is also maintainable. To strengthen his contentions, he has also placed reliance on the judgement made in CRP(NPD) No.3895 of 2011 in the case of K.S.Palanisamy and Ramasamy and another reported in 2017 SCC Online Mad 5428.

9. It is settled that an Advocate Commissioner cannot be appointed to collect the evidence. The power is conferred on the Court to appoint Commissioner for local inspection in order that the Court may better appreciate the evidence already on record.



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10. Upon perusal of the records, it seen that the revision petitioner had already made an attempt to appoint an Advocate Commissioner in the trial proceedings itself and when the same has been negatived, the revision petitioner has not challenged the same. The reasons now stated by the revision petitioner to appoint an Advocate Commissioner are not satisfied.

11. In the light of the above circumstances, this Court does not find any reason to interfere with the impugned order passed by the Court below.

12. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

04-09-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

The Additional Sub Judge, Additional Sub Court, Coimbatore.



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M.JOTHIRAMAN J.

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