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C.R.P.No.4260 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2025

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THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.R.P.No.4260 of 2025
and C.M.P.No.21873 of 2025

1.J.Raja Anandan

2.Mrs.R.Jayarathinam

...Petitioners

Vs.

1.Corporation Bank,
Rep. by its Branch Manager,
Kilpauk Branch,
No.112, Choolai High Road, Choolai,
Chennai – 112.

2.Mr.Nizar Ahamed

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the dismissal order dated 21.07.2025 passed in I.A.No.1/2019 in O.S.No.5124/2015 on the file of VI Assistant City Civil Court, Chennai.

For Petitioners : Mr.S.Packiaraj



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ORDER

The unsuccessful defendants 1 and 2 have preferred this revision petition.

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2.The brief facts of the case:

(i)The suit in O.S.No.5124 of 2015 is filed by the Corporation Bank represented by its Branch Manager sought for relief of recovery of money for a sum of Rs.9,28,879/-. The defendants have chosen to file a written statement, the Court below framed the issues and posted for trial. When the matter is pending for trial, the defendants have filed an application in I.A.No.1 of 2019 in O.S.No.5124 of 2015 under Order XXVI Rule 9 of CPC, to appoint an Advocate Commissioner, to inspect the suit property and to note down the physical features of the suit property.

(ii)The Court below vide order dated 21.07.2025 dismissed the said application on the ground that since the case is pending for trial and the possession of the property can be proved by way of documentary evidence and more particularly as the suit is filed for recovery of money based on the loan availed by the defendants 1 and 2, there is no need for appointment of an Advocate Commissioner.



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3. Aggrieved over the same, the defendants have instituted the present revision petition.

4. Learned counsel appearing for the revision petitioners submit that the Court below failed to consider the application for appointment of an Advocate Commissioner on the ground that the builder and the bank officials colluded and executed several documents based on the power of attorney executed by the revision petitioners. The Court below also failed to consider the fact that after agreement of purchase of the property, the revision petitioners had obtained bank loan and the same was sanctioned since the builder delayed the construction would causes cancellation of the bank loan.

5. Learned counsel further submits that the Court below failed to consider the fact that the defendants have executed the power of attorney as per the advice of the builder and thereafter, the bank refuses to provide the name of the person who paid the monthly installments from 2001 to 2013 through the bank or any other mode.



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6. On perusal of records, it is seen that the application has been filed to appoint an Advocate Commissioner to inspect the suit property and to note down the physical features viz.,

(i) Whether the suit property was constructed in accordance with the construction agreement filed as per Document No.16 relied upon by the plaintiff.

(ii) Whether the suit property was constructed in accordance with the approved plan.

(iii) Whether the suit property is fully constructed and who is in possession of the suit property and to file a report.

7. It is also seen from the records that the suit came to be filed for recovery of money based on the loan availed by the revision petitioners/defendants 1 and 2 by depositing the title deed as security and executed mortgage deed for the loan availed by them.

8. It is settled law that the Advocate Commissioner cannot be appointed to collect the evidence for the parties concerned to strengthen their case. The Court below has come to a conclusion that when the matter was posted for cross examination in the year 2018 itself and



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thereafter, due to filing of the petition, the trial could not be commenced.

Further, the case is pending for trial and the possession of property can be proved by way of documentary evidence and more particularly as the relief sought in the suit is recovery of money based on the loan availed by the petitioners, there is no necessity to appoint the Advocate Commissioner to prove the dispute between the parties.

9.In view of the above, there is no reason warrants to interfere with the order passed by the Court below and accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/ No
Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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To

VI Assistant Judge, City Civil Court,
Chennai.



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M.JOTHIRAMAN, J.

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