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CRP.No.4407 of 2025 and CMP.No.22550 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4407 of 2025

and

CMP.No.22550 of 2025

S.Govindasamy

... Petitioner / Petitioner / Defendant

Versus

S.Duraisamy

... Respondent / Respondent / Plaintiff

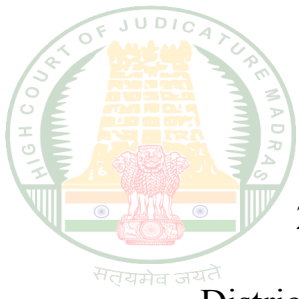
Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 30.07.2025 passed in I.A.No.4 of 2025 in O.S.No.180 of 2018 on the file of the I Additional District Judge, Erode and allow the above Civil Revision Petition.

For Petitioner

: Mr.J.Titus Enock

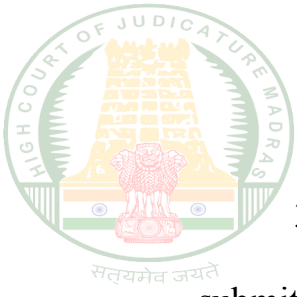
ORDER

Unsuccessful defendant has preferred the present Civil Revision Petition.



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2. The suit in O.S.No.180 of 2018 on the file of the I Additional District Court, Erode, is filed seeking partition of item 1 to 5 of the suit properties into 2 equal shares and for allotment of one such share to the plaintiff, and to put him in possession of the same. The defendant filed a written statement and necessary issues were framed. Thereafter, trial commenced and the plaintiff's side evidence has been completed. The defendant was examined as DW1 and he was also cross examined by the plaintiff's side. At this stage, the defendant filed an application in I.A.No.4 of 2025 in O.S.No.180 of 2018 under Order 26 Rule 9 of the CPC, seeking appointment of an Advocate Commissioner to note down the physical features of the suit schedule properties and to file a detailed report. Upon hearing either side, the Court below dismissed the application *vide* order dated 30.07.2025 on the ground that in a suit for partition, an Advocate Commissioner need not be appointed for the purpose of collecting evidence for the parties. Aggrieved over the same, the revision petitioner has filed the present Civil Revision Petition.



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3. The learned counsel appearing for the revision petitioner would submit that in the written statement, it has been clearly stated that an oral panchayat was held and Panchayat Muchalikka has entered between revision petitioner and the respondent / plaintiff and based on the said Muchalikka both parties are in possession and enjoyment of suit properties, pursuant to which, the eastern side godown bearing Door No.97B was allotted to the plaintiff and the western side godown was allotted to the defendant. There was no wall around the godown bearing Door No.97 C, and the defendant alone had spent a huge amount in putting up compound wall on three sides, namely north, south and west. The defendant also put up an office room building on the north-western corner. It is stated that Door No.97 B and Door No.97C are separated by an east- west wall. In order to ascertain the physical features of the suit schedule property, the appointment of an Advocate Commissioner is necessary, as it would be helpful in deciding the issues involved between the parties. It is not in dispute that after commencement of trial, the defendant was also examined and cross examined by the plaintiff's side. At this stage, an Advocate Commissioner noted down the physical features.

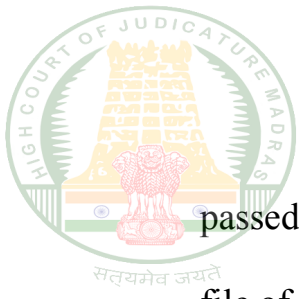


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4. It is well settled that the appointment of an Advocate Commissioner is not for the purpose of collecting evidence to establish the case of the parties concerned. At this Juncture, it may be apposite to cite the Judgment of this Court in ***Krishnamurthy, T.K. vs. Tamil Nadu Water and Drainage Board***, reported in ***2006(5) CTC 178***, wherein, it has been observed that Advocate Commissioner should not be appointed to gather evidence to prove the case of 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. Yet another Judgment of this Court in ***Minor Amid Stance & Another vs. Lakshmiammal & others***, reported in ***CDJ 2009 MHC 324***, wherein, it has been observed that the factum of possession cannot be ascertained by Commissioner, as the same could be proved by letting in oral and documentary evidence by the parties before the Court.

5. At this stage, considering the stage of the suit and the nature of the dispute between the parties, the Court below rightly dismissed the petition.

6. In view of the above, there is no reason to interfere with the order



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passed in I.A.No.4 of 2025 in OS.No.180 of 2018, dated 30.07.2025 on the
file of the learned I Additional District Court, Erode.

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7. Accordingly, this Civil Revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

16.09.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned I Additional District Court, Erode.

M. JOTHIRAMAN, J.

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