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CRP.No.4631 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4631 of 2025

and

C.M.P.No.23384 of 2025

S.Lakshmi

... Petitioner/Defendant

Versus

R.Sumathi

... Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution India, to allow the Revision Petition and set aside the order and the decretal order dated 30.07.2025 in I.A.No.2 of 2025, in OS.No.969 of 2024 on the file of the District Munsif and Judicial Magistrate at Sholinganallur.

For Petitioner : Mr.V.Manisekaran

For Respondent : Mr.C.Jagadish
for Mr.K.S.V.Sethuraman



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ORDER

Unsuccessful defendant has preferred the present Civil Revision Petition.

2. One R.Sumathi, has filed a suit seeking the relief of permanent injunction restraining the defendant, her men, agents and servants or any other persons claiming through her from in any way trespassing to the suit schedule property or in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The defendant filed a written statement, issues were framed and the suit is posted for trial. At this stage, the plaintiff has filed an application under Order XXVI Rule 9 CPC, to appoint an Advocate Commissioner along with Surveyor of the Office of the Thasildar, Shollinganallur and to physically verify, measure and demarcate the suit schedule property taking into consideration, the title documents of both the parties with the FMB sketch and to file a detailed report along with photographs in IA.No.2 of 2025 in OS.No.969 of 2024. Upon hearing either side, the Court below vide order dated 30.07.2025 allowed the petition



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considering the fact that there is a counter claim by the respondent/defendant to the suit schedule property that the revision petitioner/plaintiff has encroached some portion of the suit schedule property as contended by the defendant. Considering that there is an encroachment of the property and to proceed further it is just and necessary to appoint the Advocate Commissioner in this case.

3. The learned counsel appearing for the revision petitioner/defendant would submit that the Court below allowed the application mechanically without recording specific reasons as to why such appointment of Advocate Commissioner is essential for deciding the real controversy in a suit for bare injunction. The Court below had erred in entertaining and deciding the petition for appointment of Advocate Commissioner, when an earlier petition by the respondent/plaintiff in IA.No.1 of 2024 in OS.No.969 of 2024, for receiving disputed documents was pending enquiry. The Court below is required to hear and decide first the IA.No.1 of 2024 (IA.No.2 of 2023 in the OS.No.697 of 2015) filed by the respondent/plaintiff for “receiving documents.” Before that subsequent IA.No.2 of 2025 for “appointment of



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Advocate Commissioner” was heard by the Court and orders pronounced on 30.07.2025. The learned counsel for the petitioner/plaintiff further would submit that the respondent/plaintiff was not entitled to argue the case in IA.No.2 of 2025, for pushing the dates and events to the year 2013.

4. The Court below has committed jurisdictional error by mechanically allowing the plea for appointment of Advocate Commissioner without framing specific points for elucidation under Order XXVI Rule 9 of CPC which does not allow using the Court to “create” evidence or calling upon the Court to “generate” evidence. The learned counsel would further submit that there is clear suppression of material facts in the plaint filed in July 2015 as the respondent/plaintiff did not mention, anywhere in her plaint, the enquiry conducted by the Tahsildar in June 2015 and communicating the result thereof, in his office Memo No.L.Dis.No.4782/2015 dated 12.06.2015 confirming encroachment. The present order dated 30.07.2025 helps the respondent/plaintiff to escape the penal results of her wrong submissions in her plaint. There cannot be another survey and inquiry by another authority, either the Advocate Commissioner or any other person, unless and until the



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findings of the Tahsildar, Sholinganallur, communicated in his office Memo No.L.Dis.4782/2015 dated 12.06.2015 and in his letter No.R.C.8532/2015/1 dated 30.09.2015 are tested on trial and found by the Court to be faulty or defective and inadmissible in law.

5. Per contra, the learned counsel appearing for the respondent would submit that the report of the Thasildar, Sholinganallur dated 12.06.2015 is crystal clear that the plaintiff has encroached the land to an extent of 62 sq.metres belonging to the defendant. When the facts remains so, the plaintiff approached the Court filed a suit seeking permanent injunction against the defendant as if this defendant disturbing her lawful possession of the property. Taking advantage of the fact that the defendant is residing away from her property, the plaintiff encroached the property and filed a frivolous suit against the defendant which is unsustainable in law. The learned counsel would further submit that in order to decide the real controversy between the parties, it is just and necessary to appoint an Advocate Commissioner to note down the physical features of the suit schedule property and to measure and demarcate the suit schedule property. The learned counsel would further



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submit that adjacent to the suit schedule property, there was an order of this Court in CRP(PD).No.2999 of 2024 dated 19.10.2024 with regard to appointment of Advocate Commissioner.

6. It is seen from the records, the suit is filed for the relief of permanent injunction. The schedule of property mentioned in the plaint is that all that piece and parcel of house site property, bearing item No.26 measuring 3181 sq.ft., comprised in Old Survey No.383/10, Patta No.1050, New Survey Nos.383/9 & 10, situated in No.153, S. Kolathur Village, Tambaram Taluk, Kancheepuram District. Thereafter, I.A.No.2 of 2024 filed seeking the prayer to appoint an Advocate Commissioner along with the Surveyor of the Office of the Thasildar, Shollinganallur, who may be directed to physically verify, measure and demarcate the suit schedule property, taking into consideration the title documents of both the parties with FMB sketch and to file a report along with photographs and sketch.

7. At this juncture, it may be appropriate to relay on the judgment of this Court in ***Kamala and others, Vs. Jayaraman, in CRP(PD).No.3130 of***



2013, wherein, it has been observed that the Advocate Commissioner should not be appointed together to prove the case of the parties, since the parties would prove their case by letting in legally acceptable evidence and report of Advocate Commissioner can only either Court in evaluating the evidence should come to just conclusion. Further in the judgment of this Court in ***Chinnathambi & others Vs. Anjalai, in CRP(PD).No.1721 of 2005***, it has been held that factum of the position cannot be ascertained by the Commissioner and the same should be proved by letting in oral and documentary evidence by the parties before the Court.

8. In the case on hand, the purpose of filing a petition to appoint the Advocate Commissioner to physically verify, measure and demarcate the suit schedule property taking into consideration of the vital documents of the parties with FMB sketch. It has to be decided, only the parties after let in evidence, oral and documentary evidence before the trial Court. The Advocate Commissioner cannot be appointed to measure and demarcate the suit schedule property taking into consideration, title documents of both the parties. Allowing the application for seeking such relief by way of an



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Advocate Commissioner is unsustainable in law, there are merits in the Civil Revision Petition.

9. Hence, this Civil Revision Petition is allowed. Considering the stage of the case, the Court below shall dispose of the suit as expeditiously as possible. No costs. Consequently, connected Miscellaneous Petition is closed.

13.10.2025

Index : Yes/No
Speaking order : Yes/No
Neutral Case Citation : Yes/No
dna

To

The District Munsif and Judicial Magistrate
at Sholinganallur.



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