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CRP.Nos.4480 & 4482 of 2025 and CMP.Nos.22829 & 22833 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.Nos.4480 & 4482 of 2025

and

CMP.Nos.22829 & 22833 of 2025

1. Aruchamy Gounder

2. Ekanathamoorthy

3. Manickavasagam

... Petitioners / Petitioners /

Defendants 1 to 3 in both CRPs

Versus

V.Subramaniam

... Respondent / Respondent / Plaintiff
in both CRPs

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and final order passed by the Additional District Munsif of Pollachi in I.A.Nos.10 & 11 of 2025 in O.S.No.243 of 2017 dated 19.08.2025 and to allow this Civil Revision Petition.

For Petitioners

: Mr.M.Saravanakumar in both CRPs



COMMON ORDER

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Unsuccessful defendants 1 to 3 have preferred the present Civil Revision Petition.

2. The suit in O.S.No.243 of 2017 is filed by one V.Subramaniam against the defendants, seeking a mandatory injunction directing the defendants to remove the encroachment made into the plaintiff 'A' schedule cart-track, as fully described in schedule 'B' and mentioned as in the plaintiff plan shown as FGHI in the plaintiff plan, which is marked in green colour. The plaintiff has also sought a permanent injunction restraining the defendants, their men, and agents from in any way interfering with the usage of the plaintiff 'A' schedule Cart-track shown as ABCDE in the plaintiff plan. The defendants filed their written statement, and necessary issues were framed. The trial commenced and after completion of the evidence on either side, the case was posted for arguments. At this stage, the defendants filed an application in I.A.No.10 of 2025 in O.S.No.243 of 2017 under Section 151 of CPC to reopen the suit for further evidence, and another application in I.A.No.11 of 2025 in O.S.No.243 of 2017 under Order XXVI Rule 10A Section 75 (e) and



Section 151 of CPC, to appoint a qualified and registered Civil engineer to ascertain the age of the east-west running wall on the northern side of pathway (the suit property) and to direct him to submit a detailed report. Upon hearing either side, the Court below dismissed the both applications *vide* order dated 19.08.2025 on the ground that the defendants have stated in the written statement, as per documents, the ancestors of the defendants had given a 14 links wide east west cart tract on the souther boundary of the S.F.No.553 and 552 and the said cart track is in use by the parties and other for transporting their vehicles. They have also pleaded that, to the north of the said cart track, there was a live fence, and around 35 years ago, the first defendant planted coconut trees in his land, replacing the live fence with a 3 feet high stone wall. The contended that the 14 links wide cart track is still remains intact to the south of the stone wall. The Court below, upon perusal of Ex.B1 photograph, observed that the stone wall appears to be merely a pile of stones without any mortar or cement. In such circumstance, it would not be possible even for a civil engineer to ascertain how long those stones have been in place. It was also noted that the Commissioner's report had been filed before the Court below as early as 10.11.2022, to which the revision petitioner / defendants have filed objections, and they have also cross-



examined the Advocate Commissioner.

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3. The learned counsel appearing for the revision petitioners would submit that when the case was posted for arguments on 01.08.2025, it was observed by the Advocate Commissioner that the wall appeared to be old, being more than 10 years in age. The wall on the side of the pathway seems primitive, which, according to the report, means "old". This observation is found on page No.3 of the Advocate Commissioner's report. There is no objection regarding the wall situated within the suit schedule property to ascertain its age. Under such circumstances, unless the suit is reopened for evidence and a qualified Civil Engineer is appointed to ascertain the age of the compound wall, the issue cannot be properly adjudicated. The learned counsel further submits that the Court below, without affording an opportunity to the revision petitioners / defendants, mechanically dismissed these applications.

4. It is seen from records that the Advocate Commissioner has observed



in the report that a stone wall exists encroaching upon the suit cart-track. The Commissioner was also cross-examined by the revision petitioners / defendants. Thereafter, the revision petitioners/ defendants submitted their arguments, and only then the present applications came to be filed. It is also seen from the written statement that it was not pleaded that the stone wall is satiated within the suit cart track and the plaintiff had knowledge of the same for a long time. It is well settled that no evidence beyond pleading shall be considered. An Advocate Commissioner cannot be appointed to collect evidence to establish the case of the parties concerned.

5. Considering the stage of the proceedings, namely, that the case was posted for arguments, there is no reason to interfere with the order passed in I.A.Nos.10 & 11 of 2025 in OS.No.243 of 2017, dated 19.08.2025 on the file of the learned Additional District Munsif, Pollachi.

7. Accordingly, these Civil Revision petitions are dismissed. However, the revision petitioners / defendants have the liberty to put forth their



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arguments before the Court below. The Court below shall dispose of the same in a manner known to law, as expeditiously as possible. No costs.

Consequently, connected miscellaneous petitions are closed.

18.09.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned Additional District Munsif,

Pollachi

M. JOTHIRAMAN, J.

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