



WEB COPY



C.R.P.No.4691 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.R.P.No.4691 of 2025

and

C.M.P.No.23749 of 2025

Ramesh

... Petitioner

Versus

1. Vinayagam @ Kumar
2. Srinivasan

... Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 09.06.2025 passed by the learned District Munsif, Chengam in I.A.No.3 of 2023 in O.S.No.15 of 2023.

For Petitioner : Mr.S.Ramesh

ORDER

The unsuccessful plaintiff has preferred the present revision petition.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.15 of 2023 seeking permanent injunction restraining the defendants, their men, agents and others from in any manner interfering with the plaintiff's peaceful



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possession and enjoyment of the suit schedule property. The defendants were set *ex parte* in the main suit and the case is now posted for *ex parte* evidence.

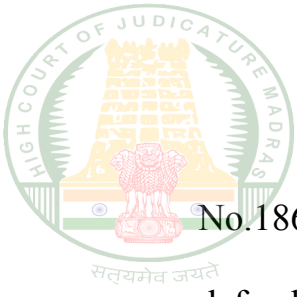
At this stage, the plaintiff has filed an interlocutory application in I.A.No.3 of 2023 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 to appoint an Advocate Commissioner to inspect the suit schedule mentioned property to note down the physical features and also to find out the encroachments made by the second respondent. Upon hearing the plaintiff, the Court below vide order dated 09.06.2025 dismissed the application on the ground that when the suit is for permanent injunction and according to the plaintiff, he is in possession of the suit schedule property, no encroachment has been made by the defendants and there is no dispute with regard to the identification of the property, there is no necessity to appoint an Advocate Commissioner solely for the purpose of collection of evidence. Aggrieved by the said order, the plaintiff has preferred the present civil revision petition.

3. The learned counsel appearing for the revision petitioner would submit that the respondents are owning the adjoining property on the southern boundary of the petitioner's property and it is the specific case of the plaintiff in the interlocutory application that respondents are attempting to encroach



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upon the southern boundary of the petitioner's property, but the Court below failed to consider the same and rejected the application. It is the further case of the revision petitioner/plaintiff that the petitioner was not attempting to collect evidence through the Advocate Commissioner and the sale deed in the favour of the petitioner's mother, which is the parent document, clearly establishes the southern boundary of the suit property to that of the defendant. Therefore, there are definite boundaries and definite parcels of land over which right of ownership is being asserted and if the Advocate Commissioner is appointed, it will be helpful to the Court to decide the issue between the parties and to come to a correct conclusion. It is further submitted that as the respondents/defendants are not contesting the case and they were set *ex parte*, no prejudice will be caused to the defendants by the appointment of Advocate Commissioner to inspect the suit schedule mentioned property and to note down the physical features. It is stated in the plaint that plaintiff's mother, out of love and affection, had settled the suit property in favour of the plaintiff under a registered settlement deed dated 14.12.2011 and the possession of the property was also delivered to the plaintiff and the plaintiff is in possession of the suit property by exercising all rights of ownership over the same. It is also contended that the plaintiff also transferred the patta in his name under Patta



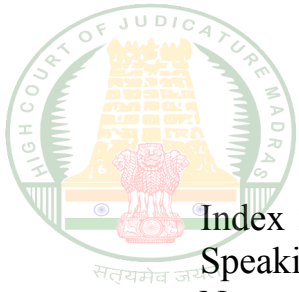
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No.1860 of Kanji Village. It is the further case of the plaintiff that the defendants, who are adjacent land owners, are trying to encroach the plaintiff's land without any basis and they are also trying to claim false right over the plaintiff's land without any basis.

4. It is seen that the suit is now posted for *ex parte* evidence. When it is the case of the plaintiff that he is in possession of the suit property and no encroachment is made by the defendants, he cannot now seek for appointment of Advocate Commissioner in order to collect evidence in a suit for permanent injunction. The burden of proof lies on the plaintiff to establish his case in a manner known to law and appointment of Advocate Commissioner solely for the purpose of collection of evidence is unwarranted. There is no error or infirmity in the order passed by the Court below warranting interference by this Court in exercise of its power of revision and the Civil Revision Petition is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

08.10.2025



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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No
gpa

To

The District Munsif
Chengam



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M. JOTHIRAMAN, J.

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