



CRP.No.4859 of 2025 and CMP.No.24484 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4859 of 2025

and

CMP.No.24484 of 2025

1. V.S.Sethumadhavan

2.M.Sengotaiyan

... Petitioners / Petitioners / Defendants

Versus

Nandhakumar

... Respondent / Respondent / Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition, by setting aside, the fair and decretal order dated 05.11.2024 passed in I.A.No.9 of 2024 in I.A.No.4 of 2023 in O.S.No.85 of 2023, on the file of the Principal District Munsif Judge, Namakkal District.

For Petitioners : Mr.R.Vivek

ORDER

Unsuccessful defendants have preferred the present Civil Revision Petition.



2. One Nandhakumar filed a suit in O.S.No.85 of 2023 against the revision petitioners namely (i) V.S.Sethumadhavan and (ii) M.Sengotaiyan, seeking the relief of permanent injunction. The defendants filed their written statement, and necessary issues were framed. At that stage, the plaintiff filed an application in I.A.No.4 of 2023 in O.S.No.85 of 2023 under Order 26 Rule 9 of the CPC, seeking appointment of an Advocate Commissioner. The said application was allowed by the Court, and an Advocate Commissioner was accordingly appointed. Thereafter, the Advocate Commissioner visited the suit schedule property. At that time, the revision petitioners filed a memo of instructions requesting a survey and demarcation of the respective portions of the property belonging to the plaintiff and the defendants, as per the decree passed in O.S.No.492 of 1979 on the file of the District Munsif Court, Rasipuram, dated 24.12.1979. Subsequently, the defendants filed I.A.No.9 of 2024 in O.S.No.85 of 2023 seeking a direction to the Advocate Commissioner to re-visit the suit property by taking into account the memo filed by the revision petitioners / defendants. Upon hearing either side, the Court below, *vide* order dated 05.11.2024, dismissed the said application on the ground that the revision petitioners / defendants could very well file their objections to the Advocate Commissioner's report and would also have the



opportunity to cross examine the Advocate Commissioner. Aggrieved over the same, the revision petitioners / defendants have filed the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioners would submit that the Court below committed an error in holding that the time gap between the decree in O.S.No.492 of 1979 and the present suit is too long and that the nature of the property might have changed. The Court, therefore, erroneously refused to permit the present application without considering the vital aspect that the earlier decree obtained by the mother of the second petitioner against the vendors of the respondent would bind the respondent. The learned counsel further submitted that the Court below failed to consider that the issue had already been decided in the earlier round of litigation in O.S.No.492 of 1979, in which an Advocate Commissioner was appointed, and the report clearly records the possession of the suit schedule property.

4. It is seen from the records that the plaintiff filed an application in



I.A.No.4 of 2023 in O.S.No.85 of 2023 under Order 26 Rule 9 of the CPC, seeking the appointment of an Advocate Commissioner to visit the suit schedule property and note down the physical features. Admittedly, the revision petitioners have not challenged the order appointing the Advocate Commissioner passed by the Court below at the instance of the plaintiff. At the time of the Advocate Commissioner's visit to the suit schedule property, the revision petitioners / defendants filed a memo of instructions requesting the Advocate Commissioner to measure and demarcate the suit schedule property as per the decree passed in the earlier round of litigation in O.S.No.492 of 1979 dated 24.12.1979. In a suit seeking the relief of permanent injunction, the Advocate Commissioner cannot be permitted to collect the evidence on behalf of either party to establish their case. The revision petitioners / defendants are at liberty to file their objections, if any, to the Advocate Commissioner's report before the Court below, and it is not necessary to revisit the suit property by the same Advocate Commissioner by taking into account the memo filed by the revision petitioner.

5. In view of the above, there are no merits in this case, and there is no reason to interfere with the order passed in I.A.No.9 of 2024 in I.A.No.4 of



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2023 in O.S.No.85 of 2023, dated 05.11.2024, on the file of the learned
Principal District Munsif Judge, Namakkal District.

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

Consequently, connected miscellaneous petition is closed.

10.10.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned Principal District Munsif Judge,

Namakkal District.

M. JOTHIRAMAN, J.

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