



C.R.P.No.4899 of 2025 and CMP.No.24749 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.R.P.No.4899 of 2025

and

CMP.No.24749 of 2025

Chandran

... Petitioner / Petitioner / Plaintiff

Versus

1. Varatharaj
2. Mallaiyan
3. Jeyaraman
4. Jeyakantham
5. Krishnan
6. Tamilarasan

... Respondents / Respondents / Defendants 1 to 6

Prayer:- Civil Revision Petition filed under Section 227 of Constitution of India, to set aside the fair and decretal order dated 17.07.2025 made in I.A.No.292 of 2023 in O.S.No.29 of 2023, on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.V.Sakkarapani

ORDER

Unsuccessful plaintiff has preferred the present Civil Revision Petition.



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2. The revision petitioner / plaintiff / Chandran filed a suit in O.S.No.29 of 2023 on the file of the District Munsif Court, Dharmapuri, seeking the relief of easementary right and a consequential permanent injunction. In the said suit, the Assistant Engineer, Tamil Nadu Electricity Board, Pallamputhur, Dharmapuri District, the Executing Engineer, Tamil Nadu Electricity Board, Dharmapuri District, the Superintending Engineer, Tamil Nadu Electricity Board, Dharmapuri District, and the District Collector, Dharmapuri District, were arrayed as defendants 7 to 10. The plaintiff and defendants 1 to 6 are private parties. The defendants 1 to 6 have filed their written statement, and the necessary issues were framed. The case was posted for Trial. At that stage, the plaintiff filed an application in I.A.No.292 of 2023 in O.S.No.29 of 2023 under Order 26 Rule 9 of the CPC, seeking the appointment of an Advocate Commissioner to inspect the suit property and file a report with a rough sketch. Upon hearing either side, the Court below, vide order dated 17.07.2025, dismissed the application on the ground that it was premature, observing that the appointment of an Advocate Commissioner at that stage would amount to assisting one party in collecting evidence, especially when the questions of title, partition, and right of access



are yet to be established. Aggrieved over the same, the plaintiff has preferred the present Civil Revision Petition.

3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the Court below failed to consider that when there is a dispute regarding the boundaries or physical features of the property, or any allegation of encroachment as narrated by one party and disputed by another party, the facts must be physically verified. The recitals in the documents alone may not reveal the true facts, and therefore, measuring the land becomes necessary. Further, the learned counsel submits that the Court below failed to note that the defendants are obstructing the plaintiff from using the pathway, thereby interfering with and destroying the plaintiff's easementary right.

4. It is seen from the records that, in the written statement, the defendants have disputed the existence of the pathway mentioned in the schedule property and have alleged that the plaintiff has suppressed prior legal proceedings and fabricated the claim. The Revision petitioner / plaintiff



asserts a right of way and easementary right over the suit schedule property, which has been specifically denied by the defendants.

5. 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.

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



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passed in I.A.No.292 of 2023 in O.S.No.29 of 2023, dated 17.07.2025 on the file of the learned District Munsif Court, Dharmapuri.

7. Considering the age of the suit and also considering the stage of the proceedings, the learned District Munsif Court, Dharmapuri, is requested to dispose of the suit in O.S.No.29 of 2023 as expeditiously as possible.

8. Accordingly, this Civil Revision petition is dismissed. Consequently, connected civil miscellaneous petition is closed. No costs.

13.10.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned District Munsif Court, Dharmapuri.



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M.JOTHIRAMAN, J.

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