



CRP.No.4772 of 2025 and CMP.No.24128 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRP.No.4772 of 2025

and

CMP.No.24128 of 2025

P.Sugukumar

... Petitioner / Petitioner / Defendant

Versus

R.Nachimuthu

... Respondent / Respondent / Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 30.07.2025 made in I.A.No.4 of 2025 in O.S.No.39 of 2020 on the file of the District Munsif, Dharapuram by allowing the Civil Revision Petition.

For Petitioner

: Mr.V. Elangovan

ORDER

Unsuccessful defendant has preferred the present Civil Revision Petition.



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2. One Nachimuthu, has filed a suit in O.S.No.39 of 2020 on the file of the District Munsif Court, Dharapuram, seeking permanent injunction. The defendant filed a written statement, and necessary issues were framed. The case was posted for trial. At that stage, the defendant filed an application in I.A.No.4 of 2025 in O.S.No.39 of 2020 under Order 26, Rule 9 and Section 151 of the CPC, seeking the appointment of an Advocate Commissioner to note down the physical features of the suit schedule property by measuring the same with the help of surveyor and to file a report with plan. Upon hearing either side, the Court below, *vide* order dated 30.07.2025, dismissed the said application on the ground that appointing an Advocate Commissioner to note down the non existence of a pathway would amount to collection of evidence, and that appointing an Advocate Commissioner at this stage would serve only that purpose. Aggrieved over the same, the revision petitioner / defendant has preferred the present Civil Revision Petition.

3. The learned counsel for the revision petitioner submitted that the Court below erred in concluding that the application was filed only to



disprove the plaintiff's case. The appointment of an Advocate Commissioner is necessary to note down the physical features of the suit property, which would assist the Court in arriving at a correct conclusion. The Court below failed to consider that the appointment of an Advocate Commissioner, especially when it pertains to a different survey number altogether, is essential for the Court to properly adjudicate the issue regarding the existence of the common pathway. The learned counsel further submitted that noting down the physical features of a suit property is merely to document its observable and measurable characteristics, such as its dimensions, shape, size, location, terrain, vegetation, and any man-made structures, without altering its fundamental composition or identity. Therefore, appointment of an Advocate Commissioner was sought solely for this purpose, and it would not cause any prejudice to either party.

4. To strengthen his contention, the learned counsel appearing for the revision petitioner relied upon the judgment of this Court in ***CRP.(PD).No.1642 of 2020 and CMP.No.10080 of 2020***, dated 14.12.2020, ***Fawzunissa Vs. The Indian Hotels Co., Ltd., Rep. by its Managing***



Director and another, wherein it was held that whenever there is a dispute regarding boundaries or physical features of the property or any allegation of encroachment as narrated by one party and disputed by another party, the facts have to be physically verified, because, the recitals of the documents may not reveal the true facts and measuring of land on the spot by a Surveyor may become necessary. It is always better if the parties are allowed to adduce evidence at the stage of trial for better appreciation of the facts which will help the Court in effectively deciding the main dispute between the parties.

5. It is seen from the records that the main suit has been filed seeking a relief of permanent injunction with regard to a cart track. The defendant has filed a written statement. At this stage, the defendant has chosen to file an application seeking the appointment of an Advocate Commissioner to note down the physical features of the suit schedule property by measuring the same with the help of a Surveyor and to file a report with plan. In a suit for injunction, it is not necessary for the defendant to seek the appointment of an Advocate Commissioner to disprove the plaintiff's case. According to the revision petitioner, there is no pathway existing in the suit property. Hence,



the request to appoint an Advocate Commissioner to inspect the suit property ascertaining whether there is a pathway or not is unwarranted. The burden of proof lies on the plaintiff to establish his case in a manner known to law. Therefore, appointing an Advocate Commissioner at this stage to ascertain whether a pathway exists or not is not necessary.

6. 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.



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7. In view of the above, there is no reason to interfere with the order passed in I.A.No.4 of 2025 in O.S.No.39 of 2020, dated 30.07.2025 on the file of the learned District Munsif, Dharapuram.

8. Considering the age of the suit and also considering the stage of the proceedings, the learned District Munsif, Dharapuram, is requested to dispose of the suit in O.S.No.39 of 2020 as expeditiously as possible.

9. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

08.10.2025

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Index : Yes/No

Speaking order : Yes/No

Neutral Case Citation : Yes/No

To

The learned District Munsif, Dharapuram.

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M. JOTHIRAMAN, J.

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