IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16-10-2025
CORAM
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN
Civil Revison Petition No. 4943 of 2025
and
Civil Miscellaneous Petition No. 24981 of 2025

M.Rajendiran ... Petitioner

Versus

M/s.Arulmighu Dhandayuthapani Swamy Tirukovil,
Represented by its Executive Officer
Ulundurpettai Town, Ulundurpettai Taluk
Kallakurichi District. ... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 02.08.2025 made in I.A.No. 05 of 2024 in O.S.No. 01 of 2013 on the file of Principal District Munsif Court, Ulundurpet.

For Petitioner : Mr.N.Manoharan

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 02.08.2025 made in I.A.No. 05 of 2024 in O.S.No.01 of 2013 on the file of Principal District Munsif Court, Ulundurpet.

2. The unsuccessful first defendant has preferred this petition. The suit in O.S.No.1 of 2013 was filed by M/s.Arulmighu Dhandayuthapani Swamy Tirukovil, represented by its Executive Officer against the first defendant - Rajendiran Chordia, the second defendant - Menabai and the third defendant - Indhira seeking for the relief of permanent injunction restraining the revision petitioner and two others from encroaching and putting up any construction in and over the suit schedule property. The defendants have filed written statement and necessary issues were framed. After completion of plaintiff's side evidence, the matter was posted for defendants' side evidence. On behalf of defendant’s side, DW1 to DW7 have been examined. At this stage, the 1st defendant has filed an application in I.A.No. 5 of 2024 in O.S.No. 1 of 2013 under Order XXVI, Rule 9 of the Code of Civil Procedure to appoint an Advocate Commissioner to note down the physical features of the suit schedule property.

3. Upon hearing either side, the Court below, vide order dated 02.08.2025, dismissed the application on the ground that the Revenue Officials were examined as witnesses and the Revenue Records have also

been marked as exhibits and the aforesaid evidences of Revenue Officials and documents are enough and sufficient to decide the issues involved between the parties. Aggrieved over the same, the 1st defendant has preferred the present Civil Revision Petition.

4. The learned Counsel appearing for the revision petitioner would submit that the respondent/plaintiff has filed the suit for permanent injunction by describing to be as vacant site whereas the revision petitioner has filed written statement contending that the suit properties is a Natham Land as per the settlement proceedings and there are several adjudications from the year 1971 over the suit schedule property. Moreover, there are contradictions prior to 1971 itself, as could be seen from the property tax assessments made by a list of 15 rooms. Further, he would submit that the respondent/plaintiff has filed the suit by suppressing the physical features. During the course of trial, PW1 casually denied the existing physical features in the suit property, though the defendants have put suggestions to PW1 to expose the plaintiff. In fact, PW1 has categorically given consent for appointment of an Advocate Commissioner to inspect the suit property to note down the physical features. The learned Counsel for the petitioner

further submitted that the suit was filed in the year 2013 and the revision petitioner/DW1 filed written statement on 12.07.2013 itself, later the plaint was amended after impleading the defendants 2 and 3 on 06.06.2019, whereupon the defendants 2 and 3 have filed written statement on 09.02.2020. The suit was dismissed for default on 15.07.2012 and it was restored only on 24.01.2019, almost after five years and the trial Court faulted the revision petitioner for the delay instead of blaming the plaintiff for his negligence.

5. It is seen from the records on behalf of the respondent/plaintiff, the Executive Officer of the temple, one Vadiveldurai was examined as PW1 and Ex.A1 to Ex.A3 were marked. PW1 was examined on 28.06.2022. During cross examination of PW1, he has categorically admitted that he has no objection to appoint an Advocate Commissioner and to inspect the suit schedule property. The revision petitioner has filed written statement wherein it has been stated that the plaintiff is not the owner of the suit property and it has been classified as 'Natham' in the settlement proceedings. It is also stated that one Viswanatha Chettiyar was the owner of the property, who died leaving behind him, his three sons,

who had entered into a partition deed dated 21.04.1910. Subsequently, one Palani Chettiyar and Dhandapani Chettiyar, who are the grandsons of Viswanatha Chettiyar had executed a Sale Deed dated 30.09.1963 in the name of revision petitioner's mother Meenai Bai. In the written statement, the revision petitioner has stated reasons in the affidavit during the course of trial that PW1 has casually denied the existing physical features in the suit schedule property, though the defendants have put suggestions to PW1 to expose the plaintiff.

6. It is stated that other sharers had also executed a sale deed in Doc.No.1066/1969 to one Subramania Mudaliar, who had later sold it to the revision petitioner's wife under a sale deed dated 31.03.2006. Similarly, revision petitioners' mother had also purchased yet another portion in a Sale Deed dated 20.02.1972. Accordingly, the revision petitioner has been in possession and enjoyment of the entire suit property as its absolute owner.

7. According to the revision petitioner, the suit was filed when the suit properties are vacant sites which fact again has been reiterated in the

proof affidavit, but the fact remains that the suit property is not a vacant site and there are constructions put up before the Suit. However, the plaintiff has filed the suit with false and untenable allegations.

8. The Court below finds that on behalf of the defendant's side Ulundur Taluk Revenue Officials were examined as DW6 and DW7 and through them the Revenue documents have also been marked, which are sufficient and there is no reason for appointing an Advocate Commissioner to note down the physical features of the suit schedule property.

9. It is well settled that in a suit for permanent injunction, Advocate Commissioner cannot be appointed to collect the evidence to prove the case of the parties concerned. At this juncture, it may be apposite to cite the judgment of this Court in ***Krishnamurthy, T.K. v. Tamil Nadu Water and Drainage Board [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 v. Lakshmiammal & Others, [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.

10. In the light of the above dictum and the reasons assigned above, this Court finds no reason warrants to interfere with the order of the Court below and the same is liable to be dismissed.

11. Accordingly, this Civil Revision Petition is dismissed. Considering that the suit is of the year 2013, the Court below is requested to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is also dismissed.

16-10-2025

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Index ; Yet No

Internet: Yes / No

M.JOTHIRAMAN, J.,

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To

1. The Principal District Munsif Court, Ulundurpet.

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