



C.R..P.(PD)(MD).No.1168 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.1168 of 2025

and

C.M.P(MD) No.6271 of 2025

Veluthai

... Petitioner/Petitioner
Plaintiff

Vs.

Karuthiruman

... Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 08.01.2025 made in I.A.No.3 of 2024 in O.S.No.245 of 2022 on the file of the Subordinate Court, Theni, and allow the Civil Revision Petition.

For Petitioner : Mr.P.Rajagopalan

ORDER

The plaintiff in O.S.No.245 of 2022 on the file of Subordinate Court, Theni, has filed the present Civil Revision Petition challenging the dismissal of her application for appointment of an Advocate Commissioner.



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2. A perusal of the records reveal that the suit has been filed for the relief of declaration of title, recovery of possession and mandatory injunction. According to the plaintiff, the defendant has put up construction in the suit schedule property pending suit. It is also brought to the notice of this Court that the defendant has not filed any written statement and had remained *ex parte*.

3. The trial Court has dismissed the said application on the ground that the extent of construction put up by the defendant could be proved by way of photographs. Challenging the same, the present Civil Revision Petition has been filed.

4. According to the learned counsel appearing for the revision petitioner, the extent of encroachment can be proved only by appointing an Advocate Commissioner to survey the property with the help of a Surveyor. Otherwise, objection may be raised by the defendant, when the decree is executed. Hence, he prayed for allowing this Civil Revision Petition.



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5. In the present case, so far the defendant has not filed any written statement. In case, if an *ex parte* decree is passed and the defendant has approached the Court to set aside the *ex parte* decree and filed a written statement, the plaintiff would always be at liberty to revive her request for appointment of an Advocate Commissioner. Till such time, there is no necessity for appointment of an Advocate Commissioner, in view of the fact that the contentions of the plaintiff remained un-controverted.

6. In case, if the defendant disputes the location of the property or the extent of encroachment, the plaintiff is always at liberty to file a fresh application for appointment of an Advocate Commissioner.

7. With the above said observations, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

15.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Court,
Theni.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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