



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.06.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1649 of 2025

and

C.M.P.(MD).No.8678 of 2025

M.Gurusamy

...Petitioner

Vs.

1.A.Manikandan

2.K.Alagarsamy

...Respondents

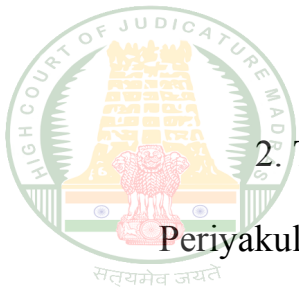
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and ex-order dated 24.03.2025 made in I.A.No.6 of 2024 in O.S.No.150 of 2018 on the file of the Sub Court, Periyakulam and to allow the same.

For Petitioner : Mr.K.Hemakarthiskeyan

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ORDER

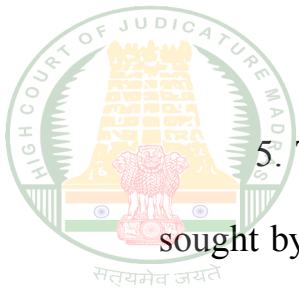
This Civil Revision Petition has been filed seeking orders to set aside the fair and ex-order dated 24.03.2025 made in I.A.No.6 of 2024 in O.S.No.150 of 2018 on the file of the Sub Court, Periyakulam.



2. The petitioner filed a suit in O.S.No.150 of 2018 before the Sub Court, Periyakulam, seeking declaration and recovery of possession. During the pendency of the suit, on 28.03.2019, the respondents allegedly encroached upon the petitioner's property by installing a culvert (plate). In order to ascertain the extent of the encroachment, the petitioner filed an application in I.A.No.6 of 2024 under Order XXVI Rule 9 of the Code of Civil Procedure before the trial Court, seeking appointment of an Advocate Commissioner to measure the extent of encroachment and to note down the physical features. The said application was dismissed by the trial Court on 24.03.2025. Challenging the said order, the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that, admittedly, during the pendency of the suit, the respondents encroached upon the petitioner's suit property. In order to ascertain the extent of the encroachment, the petitioner filed an interlocutory application in I.A.No.6 of 2024 before the trial Court. She would further submit that no prejudice would be caused to the respondents, if the said application is allowed. However, the trial Court dismissed the application, which, according to the petitioner, is unsustainable in law. Hence, she prays that this Civil Revision Petition be allowed

4. Since no adverse orders are going to be passed against the respondents, notice to the respondents is dispensed with.

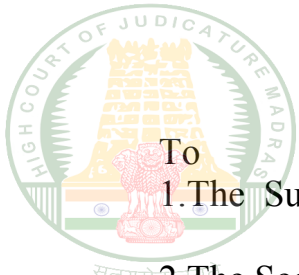


5. The facts in the present case are not in dispute. In this case, the relief sought by the petitioner, insofar as it exceeds a simple request for measurement of the alleged encroachment based on the sale deeds possessed by the respective parties, is impermissible. While a limited prayer for measurement and noting of physical features may be entertained under Order XXVI Rule 9 of the Code of Civil Procedure, any relief extending beyond that particularly one which necessitates adjudication of title or possession cannot be granted through the appointment of an Advocate Commissioner. The trial Court has rightly considered this aspect and dismissed the application. However, this Court is of the view that rendering any opinion on the merits of the case at this stage may adversely affect the interest of the petitioner. Hence, this Court is inclined to remit the matter to the trial Court for reconsideration of the application filed under Order XXVI Rule 9 CPC. Though several averments have been raised by the petitioner, this Court has consciously refrained from expressing any opinion on those aspects, and the trial Court shall decide the application on its own merits and in accordance with law.

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

17.06.2025

Internet: Yes/No
Index: Yes/No
TSG



C.R.P.(PD)(MD)No.1649 of 2019



To

1.The Sub Court, Periyakulam.

2.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI, J.

TSG

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