



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2025

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THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)Nos.1940 and 1941 of 2025

and C.M.P.(MD).No.11117 of 2025

1.A.Lunacis @ A.Lazar Onasis

2.Jannet

3.A.Raja

...Petitioners

in both petitions

Vs.

P.Indirani

...Respondent

in both petitions

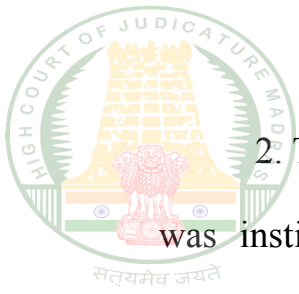
COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 09.01.2024 and 05.07.2024 respectively passed in I.A.No.5 of 2023 and 7 of 2024 in O.S.No.178 of 2016 on the file of the II Additional District Munsif Court, Nagercoil.

In both petitions

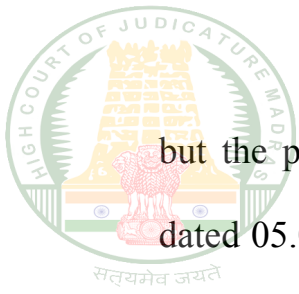
For Petitioners : Mr.M.P.Senthil

COMMON ORDER

These petitions have been filed to set aside the fair and decreetal orders dated 09.01.2024 and 05.07.2024 respectively passed in I.A.No.5 of 2023 and 7 of 2024 in O.S.No.178 of 2016 on the file of the II Additional District Munsif Court, Nagercoil.



2. The petitioners are the defendants in O.S.No.178 of 2016. The said suit was instituted by the respondent / plaintiff seeking mandatory injunction directing the petitioners to remove the alleged encroachments and permanent injunction restraining them from putting up further constructions in the plaint schedule property. While the suit was pending, the respondent filed an interlocutory application in I.A.No.321 of 2016 under Order XXVI Rule 9 CPC before the trial Court for appointment of an Advocate Commissioner to note down the physical features of the suit property and ascertain the alleged encroachments. The said petition was allowed and the Advocate Commissioner was appointed. Thereafter, she visited and measured the property and filed her report before the trial Court on 20.06.2019. The interlocutory application was closed on 29.07.2019. The first petitioner, being an artist, claims to have travelled extensively across India for his livelihood and was therefore unable to file objections immediately after the Commissioner's report. Subsequently, the petitioners filed I.A.No.5 of 2023 under Section 151 CPC seeking permission to receive their objections to the Commissioner's report and plan filed in I.A.No. 321 of 2016 and to scrap the same. The trial Court dismissed the said application on 09.01.2024. Challenging that order, C.R.P.(MD) No.1940 of 2025 has been filed. Further, the petitioners filed an interlocutory application in I.A.No.7 of 2024 under Order XVI Rule 1 CPC seeking permission to examine the scheduled witnesses. The application was partly allowed and permission was granted to examine the Executive Officer of Suchindrum Town Panchayat,



but the prayer to examine the Advocate Commissioner was rejected by order dated 05.07.2024. Challenging the said rejection, C.R.P.(MD) No.1941 of 2025 has been filed.

3. The learned counsel for the petitioners submitted that the examination of the Advocate Commissioner is necessary to prove the defence, and that the trial Court erred in rejecting the same. He contended that unless the petitioners are allowed to cross-examine the Advocate Commissioner, they would suffer irreparable loss and hardship. However, it is seen that though the suit was filed in 2016 and the Commissioner's report was submitted in 2019, the petitioners filed the applications only in 2023 and 2024. Even assuming the first petitioner travelled extensively, the other petitioners could have filed objections in time. No satisfactory explanation has been offered for the delay of about four years in filing the application to scrap the Commissioner's report. He would further submit that the Advocate Commissioner had only measured the petitioners' property situated in Survey No.247/41, while failing to measure the entire extent of land comprised in Survey No.247/2.

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



5. It is well settled that a Commissioner's report is merely a piece of evidence and not conclusive proof. When such report is contrary to admitted documents, the parties are at liberty to challenge it at the time of arguments or through their own evidence. In the present case, there is no necessity to examine the Advocate Commissioner at this stage.

6. In view of the above, both these Civil Revision Petitions fail and are accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed. Liberty is, however, granted to the petitioners to canvass all the points raised herein before the trial Court at the time of trial and to file an appropriate application, if so advised, under the relevant provisions of law to examine the Advocate Commissioner as a witness.

05.08.2025

Internet: Yes/No

Index: Yes/No

TSG

To

1.The II Additional District Munsif Court, Nagercoil.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

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