



C.R..P.(MD).No.1665 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P(MD)No.1665 of 2021

and

C.M.P.(MD)No.9000 of 2021

- 1.Madakkannu
- 2.Mutharasu
- 3.Ravi
- 4.Suresh Kumar
- 5.Sornam @ Mohana Sundaram
- 6.Chellammal
- 7.Velmurugan
- 8.Arumugam

... Petitioners

Vs.

Sudalaimuthu

... Respondents

PRAYER: Civil Revision Petition - filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.03.2021 passed in I.A.No.1 of 2020 in A.S.No.80 of 2018 on the file of the Additional Sub Court, Tirunelveli.

For Petitioner : Mr.S.P.Maharajan
For R1 to R4 : No Appearance



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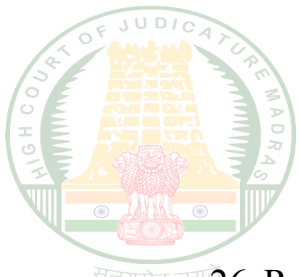
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ORDER

This Civil Revision Petition is filed challenging the fair and decreetal order dated 03.03.2021 in I.A.No.1 of 2020 in A.S.No.80 of 2018 on the file of the Additional Sub Court, Tirunelveli.

2.Though notice has been served on the respondent, none appeared on his behalf either in person or through counsel. However, considering the pendency of this petition, this Court is inclined to dispose of this Civil Revision Petition based on the available records.

3.The petitioners are the plaintiffs in the suit in O.S.No.505 of 2011 filed for permanent injunction as against the respondent/defendant alleging that the respondent/defendant encroached two feet of the petitioner's land and constructed a house. The said suit was dismissed. As against the said judgment and decree, the petitioners preferred an appeal in A.S.No.80 of 2018 before the Additional Sub Court, Tirunelveli. In that appeal, the petitioners filed an interlocutory applications for appointment of an Advocate Commissioner to inspect the property and file a report and plan under Order



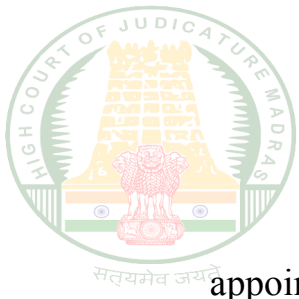
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26 Rule 9 of CPC. The said application was dismissed. Challenging the same, the present Civil Revision Petition is filed.

4.The learned counsel for the petitioners submits that the respondent has encroached the property of the petitioners to an extent of 2 feet. In the suit, the respondent claimed that there is a Well in the suit property and the same is in existence even as on date. However, the learned counsel for the petitioners submits that the Well was closed long back and in that property, two feet is encroached by the respondent. Hence, only if an Advocate Commissioner is appointed to inspect the suit property, the encroachment will be revealed. However, the Lower Appellate Court without appreciating all these facts, has dismissed the petition.

5.The facts in the present are not in dispute. Perusal of the affidavit filed in support of this petition reveals that the petitioners alleges that the respondent has encroached the property of the petitioners to an extent of 2 feet and constructed a house. The suit was filed seeking permanent injunction and the said suit was dismissed. An appeal was filed challenging the said judgment. In that appeal proceedings, an application was filed seeking



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appointment of an Advocate Commissioner and the said application was dismissed by the Lower Appellate Court.

6.The allegation made against the respondent and the prayer sought by the petitioners in the interlocutory application is different. The prayer and the contentions raised in the interlocutory application are contrary to the nature of the suit, which was filed only for permanent injunction. The Lower Appellate Court considered all these aspects and dismissed the application filed by the petitioners and the same needs no interference.

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

16.06.2025

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

- 1.The Additional Sub Court, Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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