



C.R.P.(MD)No.1727 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.1727 of 2021

and

C.M.P.(MD)No.9215 of 2021

1.R.Bitchal
2.R.Ramachandran

...Petitioners

Vs.

G.Venkatesan

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.04.2021 passed in I.A.No.109 of 2021 in O.S.No.165 of 2010, on the file of the District Munsif Court, Vadipatti and allow this revision.

For Petitioners : Mr.S.Vellaichamy

For Respondent : Mr.N.Vallinayagam



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ORDER

This petition has been filed seeking to set aside the order dated 27.04.2021 passed in I.A.No.109 of 2021 in O.S.No.165 of 2010, on the file of the District Munsif Court, Vadipatti and allow this revision.

2.The petitioners are the plaintiffs in O.S.No.165 of 2010, for declaration and recovery of possession as against the respondent / defendant. After completion of the entire evidence, at the time of arguments, the defendant filed an application under Order 26 Rule 9 in I.A.No.109 of 2021, to ascertain the market value of the property. The said application was allowed by appointing Advocate Commissioner to ascertain the market value of the suit schedule property. Challenging the same, the plaintiffs have filed the present Civil Revision Petition.

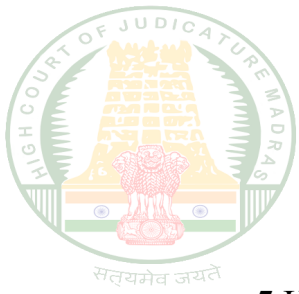
3.Learned Counsel for the petitioners would submit that already the petitioners declared the market value of the property and paid court fees in terms of Section 30 of the Tamil Nadu Court Fees and Suit Valuation Act, 1965. Immediately thereafter, the respondent filed a written statement but no plea was



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taken with regard to the market value and he has not made any objection with regard to the payment of the Court fees. After evidence, the defendant intentionally filed an application to ascertain the market value of the property. The said application is not maintainable. Order 26 Rule 9 makes it clear that if the Court feels, it may appoint an Advocate Commissioner to conduct a local investigation to elucidate any matter in dispute or to determine market value, mesne profits, or damages. In the present case, the Court did not raise the issue. The defendant raised the issue under Order 26 Rule 9, which is impermissible. Such application raised by the defendant at the fag end of the suit is impermissible. Accordingly, he prays for allowing this Civil Revision Petition.

4.Learned Counsel for the respondent / defendant submits that already he filed written statement before the Court below. No plea was raised with regard to payment of court fee. However, subsequently, the defendant came to know that the petitioners / plaintiffs paid lesser court fee instead of market value of the property and hence, it is necessary to ascertain the market value by appointing an Advocate Commissioner. Hence, prays that the order passed by the trial Court need not be interfered with.



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5. Heard the learned Counsel on either side.

6. The facts in the present case are not disputed. Admittedly, the petitioners filed a suit in O.S.No.165 of 2010, for declaration and recovery of possession, in which they assessed the market value of the property and paid court fees and thereafter, the respondent also filed written statement but no plea was taken with regard to payment of court fee and at the fag end of the trial, the defendant filed an application for appointment of Advocate Commissioner for ascertaining the market value of the property. However, the market value of the property can be demonstrated by producing necessary document at the time of evidence of defence and for which the defendant have no right to seek for appointment of advocate commissioner. If the Court arrives at a conclusion that lesser Court fee is paid for the market value, upon satisfaction, the Court can *suo motu* appoint Advocate Commissioner but not at the instance of the defendant. Hence, the order impugned order is set aside. Since the suit is of the year 2010, the Trial Court is directed to decide the issue between the parties within a period of six [6] months from the date of receipt of a copy of this order.



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7. Accordingly, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Internet: Yes/No

Index: Yes/No

MR



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To

- 1.The District Munsif Court,
Vadipatti.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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