



WEB COPY

CRP.No.111



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 24.03.2026

DELIVERED ON 01.06.2026

CORAM

THE HONOURABLE MRS. JUSTICE N.MALA

CRP.No.111/2026 and CMP.No.418/2026

1.V.T.Narayanan [Died] 1.N.Rajasekar
S/o.Late V.T.Narayanan, Res at No.13C
[New No33C] Sivankoil South Mada
Street, Villivakkam, Chennai 600049.

2.Mrs.N.Easwari
W/o.Late V.T.Narayanan, Res at No.13C
[New No33C] Sivankoil South Mada
Street, Villivakkam, Chennai 600049.

3.M.Malarvizhi
W/o.Manikandan
No.7/A Jeya Geetha Illam
Lakshmipuram Extension
3rd Street, New Avadi Road
Chennai 600 049.

4.S.Maanvizhi
W/o.Sathish Kumar
No.1/46, Agathieswarar Koil Street
Kolapakkam, Kancheepuram District.

.. Petitioners

Versus

1.A.Mani @ Mani Gurukkal
S/o.Arumugakurukal



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2.M.Karthikeyan

S/o.A.Mani

both residing at

No.8/26, Agatheeswaran Koil Street

Villivakkam, Chennai 600 049.

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the learned III Additional Judge, City Civil Court, Chennai, dated 13.10.2025 in IA.No.4 of 2025 in AS.No.59/2022.

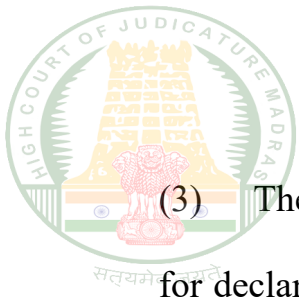
For Petitioners : M.P.Valliappan, Senior counsel for
M/s.P.V.Law Associates

For Respondents : Mr.C.Shankar

ORDER

(1) This Civil Revision Petition is filed against the order dated 13.10.2025 passed in IA.No.4/2025 in AS.No.59/2022 by the learned III Additional Judge, City Civil Court, Chennai, rejecting the petitioners' / plaintiffs' application filed under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to inspect and measure the plaintiffs' and defendants' properties with the aid of the Taluk Surveyor and to file a Report in the Appeal.

(2) The subject matter of the suit is, land measuring 96 sq.ft [2 x 48 sq.ft.] in New Door No.33C, [Old Door No.13C], Sivan Koil South Mada Street, Villivakkam, Chennai-600 049, in S.No.11A 7B2.

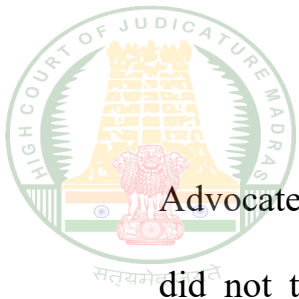


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(3) The petitioners herein are the plaintiffs in the suit in OS.No.130/2013, filed for declaration of title, possession, permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property and for mandatory injunction, directing the defendants to demolish the illegally constructed compound wall and pillars in the suit property.

GIST OF THE PLEADINGS OF THE PARTIES:-

(4) The case of the plaintiffs is that the suit property originally belonged to one Vivekanandan. The plaintiffs' father purchased the property measuring 2024 sq.ft., excluding a 3 feet passage on the eastern side, under a registered Sale Deed dated 07.03.1990, in Doc.No.1117 of 1990. According to the plaintiffs, the common passage was enjoyed by the plaintiffs' father and the neighbouring owners, both prior to and after the purchase. While so, the plaintiffs' father filed the suit in OS.No.130/2013, against the defendants since they attempted to interfere with his peaceful possession and enjoyment of the property by putting up illegal constructions. In the suit, the 1st defendant contended that under a Partition Deed dated 06.05.1981, an extent of 727 sq.ft., including the suit property, was allotted to him and that he subsequently executed a Settlement Deed in favour of the 2nd defendant, conveying an extent of 833 sq.ft. Since the defendant claimed an excess extent of 106 sq.ft., the plaintiffs filed an application for appointment of an



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Advocate Commissioner in the suit. However, since the Advocate Commissioner did not take the assistance of a Taluk Surveyor to measure the properties, the plaintiffs filed an application to direct the Surveyor to measure the suit property in consonance with the measurements in the FMB Sketch. The said application was dismissed by the Trial Court. Challenging the said dismissal order, the plaintiffs filed CRP.No.489/2020, and subsequently withdrew the same with a request to expedite the disposal of the suit. Thereafter, the suit was heard and dismissed on 13.12.2021. Aggrieved by the judgment and decree of the Trial Court, the plaintiffs filed the appeal in AS.No.59/2022 before the learned III Additional Judge, City Civil Court, Chennai.

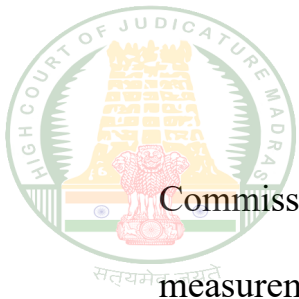
(5) The plaintiffs summoned the Tahsildar, Aminjikarai, to produce records with respect to the suit property. The Surveyor, Aminjikarai Taluk, appeared and tendered evidence as CW1 and produced survey documents relating to measurements of S.Nos.102 and 134. In the appeal, considering the discrepancy in the extent claimed by the defendants and the survey records produced by the Tahsildar, Aminjikarai, the plaintiffs filed an application under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to inspect and measure the plaintiffs' as well as the defendants' properties with the assistance of the Taluk Surveyor, so as to resolve the controversy in the suit. The Appellate Court, vide impugned order



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dated 13.10.2025, rejected the application on the ground that the Advocate Commissioner was already appointed by the Trial Court and therefore, there was no necessity to appoint another Advocate Commissioner at the appellate stage. The Appellate Court was of the view that the petition was filed only to drag on the proceedings.. Challenging the impugned order dated 13.10.2025, in IA.No.4/2025 in AS.No.59/2022, the above Civil Revision Petition is filed by the petitioners.

(6) Mr.P.Valliappan, learned Senior counsel appearing for the petitioners submitted that the entire controversy revolves around the property measuring 2x48 sq.ft., i.e., 96 sq.ft., with boundaries and measurements described in the schedule of the suit property. The learned Senior counsel submitted that the Lower Appellate Court dismissed the petitioners' application without any regard to the nature of the controversy in the suit. According to the learned Senior counsel, since the entire case relates to the extent and boundaries of the suit property, the accurate measurements of the properties of the plaintiffs/petitioners and the defendants/respondents was indispensable. The learned Senior counsel further submitted that even without considering whether the earlier Commissioner's Report and Plan was sufficient to decide the dispute between the parties, the Lower Appellate Court dismissed the application on frivolous and untenable grounds. The learned Senior counsel submitted that even the Report of the earlier Advocate



Commissioner clearly mentioned that any further dispute arising with regard to the measurements, could be resolved by measuring the property with the help of the Surveyor. The learned Senior counsel therefore submitted that the impugned order is unsustainable and deserves to be set aside.

(7) The learned counsel for the respondents, on the other hand, submitted that the appointment of the second Advocate Commissioner cannot be for the mere asking. The learned counsel submitted that as rightly pointed out by the Lower Appellate Court, the application was filed only to drag on the proceedings since nothing prevented the petitioners from seeking the assistance of the Surveyor at the time of appointment of the earlier Advocate Commissioner. The learned counsel therefore submitted that the Civil Revision Petition deserved no merit and the same should be dismissed.

(8) Heard both sides and perused the materials placed on record.

(9) As already pointed out, the controversy in the suit relates to the property measuring 96 sq.ft. [2x48 sq.ft.] morefully described in the schedule to the plaint. It is the specific case of the petitioners that the respondents encroached upon the suit property measuring an extent of 96 sq.ft., but the respondents deny the same on the ground that the property was allotted to the 1st defendant in a family partition evidenced by the Partition Deed dated 06.05.1981. The 1st defendant further



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claimed to have executed a Settlement Deed dated 02.01.2012, in favour of the 2nd defendant. The defendants therefore contended that they were in possession of the said property in their own right.

(10) Before the Trial Court, an Advocate Commissioner was appointed and in his Report, while noting down the physical features of the property and the measurements, the Commissioner mentioned that the factual Report submitted by him was based on physical features of the plaintiffs' suit schedule property and its building and the adjoining properties of the defendants as on 25.01.2013. The Advocate Commissioner, in his Report further suggested that in case of further disputes regarding measurements, the property may be measured with the help of a Surveyor to find out the accurate measurement. The petitioners contend that through the Tahsildar, Aminjikarai Taluk, survey records were produced in the Trial Court which disclosed discrepancies in the extent claimed by the respondents and therefore, the said discrepancies could be resolved only by proper survey based measurement. The petitioners hence filed the application to appoint an Advocate Commissioner, to inspect and measure the properties of the respective parties with the assistance of a Taluk Surveyor. On a perusal of the order of the Lower Appellate Court, this Court finds that the application of the petitioners was dismissed primarily on the ground that earlier, an Advocate Commissioner was



appointed in the Trial and after considering his Report along with the objections, the Trial Court dismissed the suit. The Lower Appellate Court further found that the petitioners were trying to delay the proceedings by filing petition after petition.

(11) This Court has carefully gone through the impugned order passed by the Lower Appellate Court and finds that the reasoning adopted therein is self contradictory and unsustainable. On one hand, the Lower Appellate Court observed that the appointment of an Advocate Commissioner along with the Taluk Surveyor was necessary to ascertain the actual occupation and extent of the property and to resolve the alleged discrepancy in the Settlement Deed executed by the 1st defendant. On the other hand, the very same Court found that the petitioners ought to have approached the Trial Court seeking such relief earlier and consequently, dismissed the application.

(12) The relevant portion of the Lower Appellate Court's order reads thus:-

"In the appeal, the appellant has filed an application earlier only advocate commissioner has been appointed. He does not have knowledge equivalent to the Taluk Surveyor because their day to day activities like that but the petitioners is delaying the procedure by filing one petition after another petition in order to get the unlawful claim only he is doing like that. Lastly before the Trial Court an advocate commissioner was appointed and his report also form part of the decision



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rendered in OS.No.130/2013 but the property in TSLR.No.113 and 134 as to be measured for the benefit to know about who has occupy the property how the discrepancy in the Settlement Deed executed by the defendant arise whether they are having any other right over the property can be determined only if the advocate commissioner is appointed along with the Taluk surveyor it is true that already advocate commissioner has been appointed and filed a report but report is not accompany to the Taluk Surveyor but now Taluk Surveyor is required along with the appellant petitioner as stated by the plaintiff in the suit and also how the property in 1570 has been settled in favour of the defendants by increasing the land because they got only 1570 sq.ft., but whereas they got 6 1/2 sq.ft. that shows that the advocate commissioner as to be appointed. When the said application and report is objected by the petitioner what prevented him seek prayer to assist taluk surveyor is not explained and the trial court has not decided the suit as soon as the advocate commissioner report has been filed hence it is very clear this petition is filed only to drag the proceeding and also to fill up the lacuna on the side of the petitioner. Hence, this Court is not inclined to allow the application."

(13) A perusal of the order further reveals that the Lower Appellate Court proceeded on the premise that the application was filed with an intention to protract the proceedings. However, no finding is rendered as to whether the earlier report of

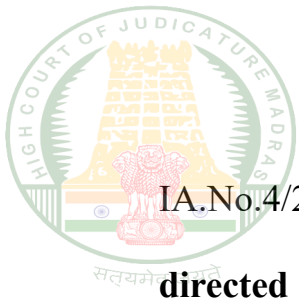


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the Advocate Commissioner was sufficient for an effective adjudication of the dispute. In the absence of such finding, the dismissal of the application merely on the ground of delay cannot be sustained. The core issue in the suit pertains to the precise extent and identity of the property alleged to have been encroached upon. Once the Lower Appellate Court itself found that the measurement of the property with the assistance of a Taluk Surveyor was necessary, it ought to have appreciated that an effective and conclusive adjudication of the controversy would not be possible without such measurement.

(14) It is also pertinent to note that even the Advocate Commissioner, who has earlier inspected the property, observed that in the event of any dispute regarding the actual measurements, the same could be properly resolved only with the assistance of a qualified Surveyor. The dispute in the suit relates to a very small extent of 96 sq.ft., and therefore, precise measurement assumes considerable significance, more so, when even as per the findings of the Trial Court, the settlement by the 1st defendant in favour of the 2nd defendant, was in excess of the extent allotted to him in the Partition Deed dated 06.05.1981. Hence, this Court finds that the Lower Appellate Court was not justified in rejecting the petition.

(15) This Court therefore finds merit in the Civil Revision Petition. Hence, the Civil Revision Petition is **allowed** and the order dated 13.10.2025, made in



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IA.No.4/2025 in AS.No.59/2022, is set aside. The Lower Appellate Court is **directed to pass appropriate orders appointing an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, by fixing a time limit for the submission of the Report and thereafter, decide the Appeal Suit on merits and in accordance with law.** No costs. Consequently, connected miscellaneous petition is closed.

01.06.2026

AP

Index : Yes/No

Internet: Yes

Speaking Order/Non Speaking Order

NCC: Yes/ No

To

1.The III Additional Judge, City Civil Court, Chennai.



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N.MALA, J.

AP

Order in
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