



WEB COPY

CRP No. 320 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CRP No. 320 of 2024 and

CMP No.1496 of 2024

1. M.Kandan, S/o. Mani,
No. 209, Pallam Street, Sembur Village,
Vandavasi Taluk, Thiruvannamalai District.
2. M.Mahadevan, S/o. Mani
No. 57A, Bakthavachalam Street, Rajiv Gandhi
Nagar, Vandavasi Taluk, Thiruvannamalai
District.

..Petitioner(s)

Vs

1. P.Natarajan, S/o. Perumal No. 208,
Pallam Street, Sembur Village,
Vandavasi Taluk, Thiruvannamalai Dist.
2. A.Perumal, S/o. Appu Gounder
No. 208, Pallam Street, Sembur Village,
Vandavasi Taluk, Thiruvannamalai Dist.

..Respondent(s)

Prayer: Civil Revision Petition filed under Article 227 of constitution of India to set aside the Fair and Decreetal order dated 07.11.2023 passed in I.A.No. 2 of 2023 in O.S.No. 58/2018 on the file of District Munsiff Court at Vandavasi.



For Petitioner(s): Mr. D.Senthil Kumaar

For Respondent(s) No appearance

ORDER

This civil revision petition has been filed challenging the order passed by the Trial Court, dismissing the application filed by the petitioners seeking appointment of Advocate Commissioner.

2. The petitioners herein/plaintiffs filed a suit for bare injunction. Subsequently, the prayer was amended by inclusion of a prayer for mandatory injunction to demolish the wall put up by the respondent allegedly pending suit and also to remove the Banana trees planted by him. Thereafter, instant application was filed by the petitioner seeking appointment of advocate commissioner to note down the physical features. The respondents did not file any counter and they have not opposed the said application. However, the Trial Court dismissed the application on the ground that the petitioners are not entitled to maintain a prayer for mandatory injunction, without a prayer for declaration of title, in view of serious dispute raised by the respondents in their written statement, with regard to the title of the petitioners. Aggrieved by the same, the petitioners have come before this court.



3. It is the specific case of the petitioners that pending suit, the respondents had put up a wall and planted Banana trees in the suit property.

Whenever there is a prayer for mandatory injunction, the offending construction shall be properly measured and earmarked to avoid unnecessary complication at the time of execution, in case, the plaintiffs succeed in the suit. The Trial Court committed an error in going to the merits of the suit, while considering the interlocutory application. Whether the suit prayer for mandatory injunction, without a prayer for declaration of title is maintainable or not is a matter to be decided, while considering the suit, not at the time of considering the interlocutory application seeking appointment of Advocate Commissioner. Having regard to the mandatory injunction sought for in the suit, noting down the physical features by local inspection is absolutely necessary. Therefore, the impugned order passed by the Trial Court warranting interference.

4. Accordingly, this civil revision petition is allowed and the impugned order passed by the Trial Court is set aside. Consequently, I.A.No2 of 2023 in O.S.No.58 of 2018 is allowed. There shall be no order as to costs. Connected miscellaneous petition is closed.

13-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MST



To

The District Munsif, Vandavasi.

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S.SOUNTHAR, J.

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