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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

Civil Revision Petition No.1385 of 2024
and
C.M.P.No.7409 of 2024

CNR: {HCMA010555152024}

Sivaprakasam
S/o.Velu Gounder

..Petitioner

Vs

Varadhan
S/o.Rajamanickam

..Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree passed in I.A.No.83 of 2023 in O.S.No.55 of 2021 dated 22.01.2024 on the file of Subordinate Judge, Gingee.

For Petitioner : Mr.R.Ganesa Moorthy

For Respondent : Mr.V.R.Appaswamee

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ORDER

This civil revision petition has been filed under Article 227 of the Constitution of India against the order passed in I.A.No.83 of 2023 in O.S.No.55 of 2021 dated 22.01.2024 on the file of Subordinate Judge, Gingee, wherein the application filed by the petitioner/defendant under Order XXVI Rule 9 CPC seeking appointment of an Advocate Commissioner to conduct survey of the suit property and submit a report, came to be dismissed by the Court below.

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2. Heard learned counsel on either side and carefully perused the materials available on record. This Court also went through the impugned order.

3. The respondent is the plaintiff, who filed the suit in O.S.No.55 of 2021 seeking for the relief of declaration and permanent injunction. The petitioner, who is the defendant, took a very specific stand that the respondent/plaintiff was never in possession and enjoyment of the suit property and that it is the petitioner/defendant, who has been cultivating the land for more than 24 years and therefore, the relief as sought for by the respondent/plaintiff is not sustainable.

4. The petitioner/defendant filed I.A.No.83 of 2023 in O.S.No.55 of 2021 seeking appointment of an Advocate Commissioner on the ground that if the Advocate Commissioner makes an inspection of the property, it can be easily ascertained that the property has been put to cultivation and that will help the Court below to take an effective decision in the suit.

5. The Court below dismissed the application mainly on the ground that an Advocate Commissioner cannot be appointed for the purpose of gathering evidence. Since it is a suit for declaration and permanent injunction, the Court has to decide the issues based on the evidence let in by both sides.

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Order QR

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6. The order passed by the Court below does not suffer from any perversity warranting interference of this Court. The respondent/plaintiff has sought for the relief of declaration and permanent injunction and the burden of proof is upon the respondent/plaintiff to prove the case. If, according to the petitioner/defendant, he is the cultivating the land for more than 24 years, the same can be easily established by marking documents before the Court below. An Advocate Commissioner can never be appointed to gather evidence and the Court below has rightly rejected the application.

In the light of the above discussion, the impugned order is sustained and this civil revision petition is dismissed. There shall be a direction to the Sub Court, Gingee, to dispose of the suit in O.S.No.55 of 2021 within a period of six (6) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28-10-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
gm

To
The Subordinate Judge,
Gingee.

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N.ANAND VENKATESH, J.

gm

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