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C.R.P. NO.2642 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 21 / 11 / 2025

ORDER PRONOUNCED ON: 24 / 02 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P. NO.2642 OF 2022

AND

C.M.P. NO.13691 OF 2022

N.Nithyanandan,
S/o.R.Narayanaswamy,
D.No.725, Avinashi Road,
Coimbatore – 641 018.

... Petitioner/Petitioner/
Plaintiff

Versus

1.R.Narayanasamy,
S/o.Ramakrishnama Naidu,
D.No.2/227, Thudiyalur Road,
Kotaiyampalayam, Kondayampalayam,
Vaiyampalayam, Coimbatore – 641 110.

2.N.Krishnakumar,
S/o.Narayanaswamy,
D.No.9, Vijayalakshmi Apartments,
Bharathu Park Road,
Saaks College, Coimbatore – 641 043.

3.Corporation Bank,
Represented by its Manager,
Velandipalayam Branch,
No.12/20, Bharathi Park,
8th Cross Corner, NSR Road,
Saibaba Colony, Coimbatore – 641 011.



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4.Axis Bank Ltd.,
Represented by its Manager,
No.12/55, Sathy Main Road,
Sarkar Samakulam,
Coimbatore – 641 107.

...Respondents/Respondents/
Defendants 1 to 4

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated January 20, 2022 passed in I.A. No.2 of 2019 in O.S. No.816 of 2019 on the file of Hon'ble V Additional District Judge, Coimbatore by allowing this Civil Revision Petition.

For Petitioner	:	Ms.Senthamizharasi for Mr.A.Thiyagarajan
For Respondents-1 & 3	:	Served – No appearance
For Respondent-2	:	Ms.V.Ramya for Mr.R.Bharath Kumar
For Respondent-4	:	Mr.V.Lokesh Kumar

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, praying to set aside the Dismissal Order dated January 20, 2022 passed in I.A. No.2 of 2019 in O.S. No.816 of 2019 on the file of 'the V Additional District Judge, Coimbatore' [hereinafter referred to as the 'Trial Court'], by the Petitioner/Plaintiff therein.



2. The Petitioner herein is the Plaintiff and the Respondents herein are the Defendants in the Suit in O.S.No.816 of 2019. For the sake of convenience, the parties will be referred to as per their array in the Original Suit.

3. The 1st Defendant is the father of the Plaintiff. The 2nd Defendant is the Plaintiff's brother.

4. The case of the Plaintiff is that Suit Properties are ancestral and joint family properties in which the Plaintiff is entitled to 1/3 share. Accordingly, he filed a Suit seeking partition and division of properties. Then the Plaintiff filed an application under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure, 1908, seeking to pass an order appointing an Advocate Commissioner to make local inspection of the Suit Properties, to note down the physical features and file a report.

5. In the affidavit filed in support of the said petition, the Plaintiff averred that during the 1st week of July 2019, he came to know that the 2nd Defendant attempted to put up a construction in a portion of the Suit Property in S.No.307 measuring an extent of 59 Cents [Suit Item Nos.1 (ii)]. For that purpose, the 2nd Defendant dug pits to erect pillars. Further,



the Plaintiff came to know that the 1st Defendant effected a Settlement Deed dated March 06, 2019 in favour of the 2nd Defendant. Further, the 1st Defendant has availed a loan of Rs.1.85 Crores by mortgaging 1 Acre in Suit Survey No.24/4 with the 3rd Defendant's bank. Hence, the appointment of an Advocate Commissioner and their report is necessary to decide the Suit. Accordingly, the Plaintiff prayed to allow the application.

6. The case of the Defendants is that the Suit Properties are absolute properties of the 1st Defendant. Further, the Plaintiff was separated from the joint family and has been living in his father-in-law's house for the past 29 years. Therefore, the Plaintiff stands ousted from the Suit Properties for the past 29 years. The Plaintiff has no right or title over the Suit Properties. Hence, the appointment of an Advocate Commissioner is in no way helpful to decide the *lis* between the parties. Accordingly, the Defendants 1 and 2 prayed to dismiss the application.

7. The Trial Court after hearing both sides' concluded that the construction has already been completed in the suit properties. Whether the plaintiff is entitled to 1/3 share is a question that can be decided only after trial in the Suit. Further considering the nature of the relief sought in the



Suit, appointment of an Advocate Commissioner is not necessary and accordingly, the Trial Court dismissed the Interlocutory Application.

8. Feeling aggrieved by the Dismissal Order, the Petitioner therein has preferred this Civil Revision Petition.

9. Ms.Senthamizharasi appearing for Mr.A.Thiyagarajan, Counsel on record for the Petitioner would submit that the Trial Court failed to consider the fact that the Defendants 1 and 2 have been attempting to alter the nature and character of the Suit Item No.1 (ii) and other properties, by putting up construction there. Further, no prejudice would be caused if the application is allowed. The Trial Court without considering the Plaintiff's case, dismissed the application. Accordingly, she would pray to allow this Civil Revision Petition, set aside the Fair and Decretal Order of the Trial Court and allow the Interlocutory Application in I.A. No.2 of 2019.

10. *Per contra*, Ms.V.Ramya appearing for Mr.R.Bharath Kumar, Counsel on record for the 2nd respondent would submit that in a Suit for partition, appointment of an Advocate Commissioner to note down the physical features and to file report is in no way helpful to the case of the Plaintiffs. Only with a view to harass the Defendants, the Plaintiff have



filed the said application. The Trial Court after appreciating the facts and circumstances of the case, rightly dismissed the application. There is no warrant to interfere with it. Accordingly, she would pray to dismiss this Civil Revision Petition and sustain the Order passed by the Trial Court.

11. Mr.V.Lokesh Kumar, learned Counsel appearing for the 4th respondent adopts the arguments of the 2nd Respondent's Counsel.

12. This Court has perused the Complaint, Written Statement, Affidavit and Petition in I.A. No.2 of 2019 and has also considered both sides' submissions.

13. There is no dispute with regard to the relationship between the parties. According to the Plaintiff, the Suit Properties are ancestral and joint family properties in which he is entitled to 1/3 share. The defence of the Defendants 1 to 3 *inter alia* is that the Suit Properties are absolute properties of the 1st Defendant in which the Plaintiff has no right or title over the Suit Properties. Furthermore, the Plaintiff moved out of the joint family in the year 1992 and has been living in his father-in-law's house. Even if he had any right, it has been extinguished by the principle of *ouster*. That being the case of the parties, this Court is of the view that the



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appointment of an Advocate Commissioner to note down the physical features does not at all arise. The report of the Advocate Commissioner will not anyway be helpful to decide the dispute between the parties. The Trial Court after appreciating the entire facts and circumstances, rightly dismissed the Interlocutory Application. There is no warrant to interfere with it. This Civil Revision Petition does not have any merit and deserves to be dismissed.

14. Resultantly, this Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

24 / 02 /2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
pam/TK

To
1.The V Additional District Judge,
Coimbatore.

2.The Manager,
Corporation Bank,
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R. SAKTHIVEL, J.

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