



C.R.P.No.3162 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.01.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3162 of 2024
and CMP.No.16887 of 2024

1.Poorasu @ Poovarasu
2.Mottaiyappan @ K.Murugesan
3.K.Muthusamy
4.K.Velusamy

... Petitioners

vs.

1.Palanisamy
2.Thangavel

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 13.12.2021 passed in I.A.No.414 of 2021 in O.S.No.113 of 2016 on the file of the District Munsif Court, Avinashi.

For Petitioners : Mr.P.Santhosh

For Respondents :Mr.M.Guruprasad



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4. The learned counsel appearing for the petitioner would submit that the respondents have trespassed into the portion of the suit property and laid a cart track. In order to find out the exact measurement of the encroached portion, appointment of Advocate Commissioner is absolutely necessary.

5. The learned counsel appearing for the respondents/plaintiffs would submit that earlier Advocate Commissioner was appointed by the trial Court and he also filed a report in 2016 itself. The petitioners detailed objection is sufficient and hence the filing of instant application seeking appointment of Advocate Commissioner and the same is not maintainable.

6. It is seen from the typed set of papers, earlier the Advocate Commissioner visited the suit property on 28.07.2016 at the instance of the plaintiffs and no notice was issued to the defendants. The defendants filed counter claim in the present suit along with written statement only on 21.03.2018. It is the case of the defendant, the plaintiff trespassed into the portion of the suit property and laid the cart track.



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7. It is also seen from the earlier Advocate Commissioner's report, he did not issue notice to the defendant at the time of local inspection. An appointment of ex-parte Advocate Commissioner and filing of the report by him without serving notice to the defendant would not prevent the petitioners/defendants from seeking appointment of Advocate Commissioner. After he entered appearance, he filed his counter claim. In view of the controversy involved in the suit with regard to the exact portion of the alleged encroachment mentioned in the counter claim, the appointment of Advocate Commissioner to measure the counter claim mentioned property i.e., old S.No.325/B, R.S.No.325/B1 and 325/B2 would help the Court to decide the controversy involved in the lis. Since the petitioners claim that the respondents trespassed into the portion of the suit property and put up a cart track, it may not be possible for the petitioners to find out the exact measurement otherwise by employing the qualified Surveyor. Therefore, the Advocate Commissioner shall be appointed by directing him to measure the suit property (counter claim property) with the help of a Surveyor and file a report with regard to the physical features.



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8. Accordingly, the Civil Revision Petition stands allowed and the trial Court is directed to appoint an Advocate Commissioner to measure the counter claim property situated in R.S.No.325/B1 and 325/B2 with the help of a qualified Surveyor and file a report with measurement and physical features. Both the parties are directed to co-operate with the Advocate Commissioner to measure the suit property and file a report as early as possible. No costs. Consequently, connected miscellaneous petition is closed.

27.01.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court,
Avinashi.



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S.SOUNTHAR, J.

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