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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2026

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**THE HONOURABLE MR JUSTICE P.B. BALAJI**

CRP.No.3256 of 2024  
& CMP.No.17386 of 2024

1.Subramaniyan  
2.Nallammal  
3.Bhuvaneswari

... Petitioners

Vs.

1.Tamilarasi  
2.Kannan  
3.Santhi

... Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 04.06.2024 in E.A.No.36 of 2024 in E.A.No.102 of 2018 in E.P.No.61 of 2017 in O.S.No.543 of 2003 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioners : Mrs.Chitra Sampath  
Senior Counsel  
for M/s.K.Aswini Devi

For Respondents : Mr.V.Raghavachari  
Senior Counsel  
for M/s.V.Srimathi



## **ORDER**

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The petitioners are judgment debtors in E.P.No.61 of 2017. An application in E.A.No.36 of 2024 was taken out by them, seeking appointment of an Advocate Commissioner. The said application was dismissed by the executing Court, as against which, the present revision petition has been preferred.

2.I have heard Mrs.Chitra Sampath, learned Senior Counsel for Ms.K.Aswini Devi, learned counsel for the revision petitioners and Mr.V.Raghavachari, learned Senior Counsel for Mrs.V.Srimathi, learned counsel for the respondents.

3.Mrs.Chitra Sampath, learned Senior Counsel appearing for the revision petitioners would submit that in a suit for partition, a preliminary decree came to be passed and confirmed up to this Court in Second Appeal. However, both the parties have executed a Power of Attorney in favour of same agent, who has alienated the suit property, after joint development having been made. It is the further contention of the learned Senior Counsel that the Second Appeal challenging the preliminary decree was pending and at that stage, in view of the joint exercise of the parties in developing the



lands and appointing a power agent to sell portions of the land, the Second Appeal itself was withdrawn in good faith.

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4.It is the specific contention of Mrs.Chitra Sampath, learned Senior Counsel that despite the entitlement of the 1<sup>st</sup> respondent/daughter to an extent of 2 acres having been sold through the power agent, the 1<sup>st</sup> respondent has filed a final decree application, basing her claim on the report of the Advocate Commissioner, which was filed before the parties amicably settled their disputes and started jointly alienating the suit lands. The learned Senior Counsel would therefore contend that only in order to establish that the lay of the property has changed and the entitlement of the 1<sup>st</sup> respondent/daughter has already been sold in entirety and nothing remains to be adjudicated in the final decree application, the Advocate Commissioner application had been taken out. She would further contend that the execution petition itself has been filed, projecting the lands to be vacant, but however, several buildings have come up in the subject lands and unless an Advocate Commissioner is appointed and inspects the property and files a report, the executing Court will not be in a position to evaluate the objections of the revision petitioners. The learned Senior Counsel would therefore pray for the revision being allowed.



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5.Per contra, Mr.V.Raghavachari, learned Senior Counsel appearing for the respondents would support the findings of the executing Court dismissing the application, contending that in order to establish the case of the revision petitioner that the 1<sup>st</sup> respondent's share has already been encumbered and alienated and nothing remains to be allotted to her, it would be sufficient if the documents in that regard are filed and there was absolutely no necessity for a Commissioner to be appointed to inspect the suit property. He would, in fact, bring to my notice that the executing Court has rightly found that the objections of the revision petitioner can be tested by leading documentary evidence and it was totally unnecessary for appointing an Advocate Commissioner. He would therefore pray for dismissal of the revision.

6.I have carefully considered the submissions advanced by the learned Senior Counsel on either side. I have also gone through the records, including the impugned order passed by the executing Court.

7.The petitioners have filed an application under Section 47 of CPC, contending that the 1<sup>st</sup> respondent has mischievously taken out the final decree application, despite the parties reaching a settlement and the entire



entitlement of above 2 acres or thereabouts of the 1<sup>st</sup> respondent having been already alienated by her.

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8.It is the contention of the revision petitioners that even after exhausting her entire share, the 1<sup>st</sup> respondent is now attempting to make unsuccessful enrichment at the extents of the revision petitioners. Pending the said Section 47 application, the petitioners sought for appointment of an Advocate Commissioner. The said application in E.A.No.36 of 2024 was dismissed by the executing Court and as against the same, the present revision petition has been filed.

9.At the outset, in order to establish that the 1<sup>st</sup> respondent's entitlement of 2 acres or thereabouts has already been encumbered / alienated was sold, appointment of an Advocate Commissioner is not going to be of any assistance. The factum of sale or alienation of the share of the 1<sup>st</sup> respondent can be established by even production of certified copies of sale deeds or connected documents.

10.Insofar as the construction of buildings in the vacant lands, the executing Court has, in fact, recorded that both sides have admitted that the



lands are no longer vacant and buildings have come up. Therefore, even for ascertaining the nature of the property, there is no necessity to appoint a Commissioner since the 1<sup>st</sup> respondent has admitted construction of buildings over the vacant lands.

11.The executing Court has rightly found that there was absolutely no necessity for appointment of an Advocate Commissioner and the contentions of the revision petitioners can be established by filing appropriate documentary evidence. The executing Court has passed a well reasoned order, rejecting the request for appointment of Advocate Commissioner. I do not find that the said order of the executing Court requires interference in revision and there is no merit in the revision petition.

12.In fine, the Civil Revision Petition is dismissed. No costs.  
Connected Civil Miscellaneous Petition is closed.

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Speaking/Non-speaking : Yes/No

Index : Yes / No

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**P.B. BALAJI,J.**

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To

The Principal District Munsif Court, Kallakurichi.



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