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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CRP No. 3648 of 2024
and CMP No.19830 of 2024

CNR: {HCMA011562492024}

Case QR

R.Pugazhenthi
S/o. Ranganathan, No.7, Palla Street,
Sothiyambakkam Village, Vembakkam Taluk,
Tiruvannamalai District

..Petitioner(s)

Vs

1. Gurunathan
   S/o. Kanniyappa Gounder, No.7, Palla Street,
   Sothiyambakkam Village, Vembakkam Taluk,
   Tiruvannamalai District.

2. Vedhachalam
   S/o. Gurunathan, No.7, Palla Street,
   Sothiyambakkam Village, Vembakkam Taluk,
   Tiruvannamalai District

3. Deenadayalan
   S/o. Gurunathan, No.7, Palla Street,
   Sothiyambakkam Village, Vembakkam Taluk,
   Tiruvannamalai District

4. Raji
   S/o. Gurunathan, No.7, Palla Street,
   Sothiyambakkam Village, Vembakkam Taluk,
   Tiruvannamalai District

..Respondent(s)

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PRAYER

Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 06-07-2024 passed by the Sub Court Cheyyar in I.A.No.1/2023 in O.S.No.1/2021 and pass such further or other order or orders as this Honourable Court may deem fit and proper in the circumstances of this Petition and thus render justice.

For Petitioner(s): Mr.N.Kumar

For Respondent(s): Mr.S.Makesh
for R1 to R4

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.1/2023 in O.S.No.1/2021, dated 06-07-2024, on the file of the Sub Court, Cheyyar, wherein the application filed by the petitioner/plaintiff under Order XXVI Rule 9 of CPC, for appointment of an Advocate Commissioner to inspect the property and measure the same and to submit a report along with a plan came to be rejected by the Court below.

2.Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondents.

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3.This Court carefully considered the submissions made on either side and the materials available on record and this Court also went through the order passed by the Court below.

4.The petitioner is the plaintiff who filed the suit in OS.No.1 of 2021, seeking for the relief of declaration of title and for permanent injunction.

5.The petitioner/plaintiff filed an application in IA.No.1 of 2023, under Order XXVI Rule 9 of CPC, for appointment of an Advocate Commissioner to inspect the property and to submit a report based on the stand that was taken by the respondents/defendants.

6.The Court below has dismissed the said application on the ground that the suit has been filed for declaration and permanent injunction and the petitioner/plaintiff has to establish his right and title over the property and if the same is done, there is no need for appointing an Advocate Commissioner in order to grant the relief in favour of the plaintiff. Aggrieved by the said order, the present CRP has been filed before this Court.

7.In the considered view of this Court, the reasoning given by the Court below while dismissing the application does not suffer from any perversity warranting the interference of this Court. The petitioner/plaintiff wanted an

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Advocate Commissioner to be appointed on the ground that the respondents/defendants are attempting to encroach upon the property and put up construction by claiming a right over the property. In the case in hand, considering the nature of relief sought for by the petitioner/plaintiff, they must first establish their right and title over the property and by letting in oral and documentary evidence. The fact that an attempt is being made by the defendants to encroach and put up a construction is not a ground for appointing an Advocate Commissioner. As rightly held by the Court below, if an encroachment has been made and the petitioner is seeking for mandatory injunction and recovery of possession, it would make sense to appoint an Advocate Commissioner to measure the property and ascertain the extent of the encroachment. However, this exercise can be done only towards the end of the proceedings, after both sides have let in their evidence. Ultimately, the report of the Advocate Commissioner must help the Court to decide the suit effectively on merits. Considering the nature of relief sought for by the petitioner/plaintiff, the Court below did not find any ground to appoint an Advocate Commissioner and the said order does not warrant the interference of this Court.

8.In view of the above, the order passed by the Court below in I.A.No.1/2023 in O.S.No.1/2021, dated 06-07-2024, on the file of the Sub Court, Cheyyar, is confirmed and this CRP stands dismissed.

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9.In the result, this Civil Revision petition is dismissed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

04-11-2026

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

To

The Sub Court Cheyyar

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N.ANAND VENKATESH, J.

KP

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