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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-10-2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

CRP No. 3848 of 2025
and
CMP No. 28633 of 2026
&
CMP No. 20417 of 2025

CNR:{HCMA011737832025}

1. D.Jayakumar

2.D.Babu

3.D.Usha

4.J.Maheswari

5.N.Padmanaban

Appellant(s)

Vs

1.Dr. Kamlesh Kumar

2.Mr.Dharmender Kumar

Respondent(s)

PRAYER

Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order of the court of the XVII Assistant Judge, City Civil Court, Chennai in IA No. 3 of 2021 in OS No. 2448 of 2021, dated 25-07-2025.

For Petitioner(s): J.Nagarajan

For Respondent(s): M/s.Sunil Kumar

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This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order passed in IA No. 3 of 2021 in OS No. 2448 of 2021, dated 25-07-2025, on the file of XVII Assistant Judge, City Civil Court, Chennai, wherein the application filed by the respondents/plaintiffs under Order XXVI Rule 1 of CPC, for appointment of an Advocate Commissioner to note down the physical features and to measure the same and to submit a report, came to be allowed by the Court below.

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

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

4.The respondents/plaintiffs filed the suit in OS.No.2448 of 2021, seeking for the relief of declaration to declare their right of passage over the schedule mentioned property and for permanent injunction restraining the defendants from in any manner disturbing or interfering with the ingress and egress of the plaintiffs in the common passage.

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5.The respondents/plaintiffs filed IA.No.3 of 2021, under Order XXVI Rule 1 of CPC, for appointment of an Advocate Commissioner to conduct an inspection, measure the property and note down the physical features and submit a report along with a plan.

6.The Court below has allowed this application and aggrieved by the same, the present CRP has been filed before this Court.

7.In the considered view of this Court, the respondents/plaintiffs have sought for the relief of declaration of title and permanent injunction over a common passage. Both sides are relying upon documentsto substantiate their claims. In a case of this nature, the Court has to first proceed further with the suit, record the oral evidence and mark the documentary evidence and thereafter deal with the application filed for appointment of an Advocate Commissioner to see if the report of the Advocate Commissioner will help the Court in effectively disposing of the suit. In the case in hand, even at the initial stage, the Court below has undertaken this exercise. This procedure followed by the Court below is not sustainable.

8.In view of the above, there shall be a direction to the Court below to proceed further with the suit, record the evidence of both sides and on completion of the same, deal with the application for appointment of the

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Advocate Commissioner to see if the report is required for the purpose of effectively disposing of the suit. In other words, the Court will deal with the appointment of an Advocate Commissioner after recording the evidence from both sides. So that the Court will be in a position to appreciate if any such inspection is required or it can be ascertained even from the evidence that has been let in by both sides. The Court below shall keep in mind this observation made and proceed further with the suit.

9.It is brought to the notice of this Court that issues have already been framed and suit is at the stage of trial having a Court below shall proceed further with the suit and in any event the suit is directed to be disposed of by the XVII Assistant Judge, City Civil Court, Chennai, within a period of six months from the date of receipt of copy of the order.

10.In the result, this Civil Revision Petition is disposeds in the above terms. No costs. Consequently, connected CMP No. 20417 of 2025 and CMP No. 28633 of 2026 are closed.

29-10-2026

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

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To

XVII Assistant Judge, City Civil Court,
Chennai

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N.ANAND VENKATESH J.

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