



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 15.12.2025

Order pronounced on : 30.01.2026

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.4166 of 2025

& CMP.Nos.31047 & 21410 of 2025

Jayabalan

... Petitioner

Vs.

Pandiyan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 07.07.2025 passed in I.A.No.2 of 2025 in A.S.No.33 of 2023 on the file of the Principal Sub-Court, Ariyalur.

For Petitioner : Mr.Usha Raman

For Respondent : Mr.S.Jim Raj Milton



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ORDER

The 2nd defendant, who is the appellant in [A.S.No.33](#) of 2023, pending the said first appeal, moved an application I.A.No. 2 of 2025 under Order XXVI Rule 9 of the Code of Civil procedure, 1908, seeking appointment of an Advocate Commissioner to fix the counter claim property and submit a plan and report with the assistance of the surveyor. The learned Principal Sub-Court, Ariyalur allowed the said application, as against which, the respondent/plaintiff has come up by way of this revision petition.

2.I have heard Mr.Usha Raman, learned counsel for the petitioner and Mr.S.Jim Raj Milton, learned counsel for the respondent.

3.The learned counsel for the revision petitioner, Mr.Usha Raman, would contend that in a suit filed for permanent injunction in respect of Survey No.555/800, measuring 3300 sq.ft, the revision petitioner had filed a counter claim in respect of Survey Nos.555/789, 790 and 802, alleging that the plaintiff had encroached into the defendant's property and constructed a compound wall and sought for a relief of a mandatory injunction to remove



the said compound wall. Pending the suit, an application for appointment of Advocate Commissioner was filed in I.A.No.119 of 2009 and a report was also filed before the Court. An application was taken out for scrapping the said report of the Advocate Commissioner, which was allowed and the report of the Commissioner was scrapped. However, the plaintiff did not take further steps for reissuance of the Advocate Commissioner warrant. The trial court dismissed the counter claim filed by the defendants, finding that in the absence of the Commissioner's report regarding the compound wall mentioned in the counter claim, it was not possible to grant relief to the defendants. The trial Court proceeded to decree the suit for permanent injunction in favour of the respondent/ plaintiff, as against which the first appeal has been preferred.

4.It is therefore the contention of the learned counsel for the petitioner that it was not the fault of the petitioner/2nd defendant as the respondent/plaintiff did not ensure that the Commissioner warrant was reissued, pursuant to the report of the Commissioner being scrapped. Mr.Usha Raman, learned counsel for the petitioner, referring to the schedule to the counter claim, would submit that the schedule is not in compliance



with Order VII Rule 3 Code of Civil Procedure, 1908, and the four boundaries have also not been stated and in such circumstances, the petitioner cannot be entitled to a decree for mandatory injunction and in such view of the matter, there was no purpose in appointing an Advocate Commissioner as prayed for by the respondent/ plaintiff. He would therefore pray for revision being allowed.

5.Per contra, Mr.S.Jim Raj Milton, learned counsel appearing for the respondent/2nd appellant would contend that the respondent had himself filed an application for appointment of an Advocate Commissioner and in I.A.No.119 of 2009, the report of the Commissioner was scrapped and a new Advocate Commissioner was appointed. However, the plaintiff did not take any steps to ensure that the newly appointed Commissioner inspected the property and filed a report and as a result of the same, the application in I.A.No.61 of 2012 for appointment of another Advocate Commissioner has been closed by the trial Court. The learned counsel would therefore state that in such circumstances, the First Appellate Court had rightly allowed the application of the respondent/ 2nd appellant and the same does not warrant interference in the revision.



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6.I have carefully considered the submissions advanced by the learned counsel on either side.

7.The respondent in this revision had filed a counter claim, seeking a relief of mandatory injunction for removal of a compound wall put up by the revision petitioner in the property belonging to the defendants. No doubt, the counter claim schedule does not contain four boundaries. However, the relief sought for in the counter claim is not in respect of possession of any portion of immovable property, but only for removal of a compound wall that has been constructed, according to the defendants, in the property belonging to them, which survey number has been set out in the schedule to the counter claim. Therefore, I do not see how the non-furnishing of the four boundaries will in any manner affect the case of the respondent/ 2nd appellant.

8.With regard to the argument of Mr.Usha Raman, learned counsel for the petitioner that the application itself is not maintainable and the appellate



Court has erroneously appointed the Advocate Commissioner, without noticing that the report of the Advocate Commissioner will not lend any assistance in deciding the contentious issue as to whether the petitioner has trespassed into the property belonging to the defendants. The First Appellate Court has noticed the fact that pending the suit, at the instance of the revision petitioner in I.A.No.119 of 2009, an Advocate Commissioner was appointed and the said commissioner also filed his report and plan. However, in I.A.No. 61 of 2012, the said report and plan were scrapped and a fresh Advocate Commissioner had been appointed by order dated 24.06.2014. The plaintiff did not take any steps till the disposal of the suit to have the Commissioner inspect the property and file a report. This led to the trial Court closing I.A.No. 61 of 2012 and proceeding to decide the suit, dismissing the counter claim for mandatory injunction for removal of the wall and decreeing the suit filed by the petitioner, granting relief of permanent injunction.

9.As can be seen from the above discussion, the respondent was not at fault for not having the property inspected. Noticing that the trial Court had dismissed the counter claim on the ground that the report and plan of the



Commissioner was not available, the respondent has sought for appointment of an Advocate Commissioner in the pending first appeal. The First Appellate Court has rightly entertained the application, finding that the appointment of a Commissioner to identify the lay of the compound wall would be of assistance to the First Appellate Court to decide the appeal.

10.It is the specific case of the respondent that the petitioner has encroached into the property belonging to defendants and constructed a compound wall. In the schedule to the counter claim, the respondent has clearly stated that the compound wall is situated in the survey numbers belonging to them. In such circumstances, the appointment of an Advocate Commissioner to fix the counter claim property with the help of a qualified surveyor cannot be faulted. I do not see any reasons warranting interference with the well-considered order of the First Appellate Court, in revision. There is no merit in the revision.

11.In fine, the Civil Revision Petition is dismissed. Connected Civil Miscellaneous Petitions are closed.



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Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Principal Sub-Court, Ariyalur.



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P.B. BALAJI, J.

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Pre-delivery order made in
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