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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-11-2026

CORAM

THE HON'BLE MR JUSTICE N. ANAND VENKATESH

CRP No. 7144 of 2026

CNR: {HCMA011886812026}

Case QR

B.Sampath
S/o. Late. Bolli Gounder,
P.Gollahalli Village,
Erranahalli Post,
Palacode Taluk,
Dharmapuri District 636 808.

..Petitioner(s)

Vs

M.Ranganathan
S/o. Late. Munisamy Gounder,
P.Gollahalli Village,
Erranahalli Post,
Palacode Taluk,
Dharmapuri District 636 808.

..Respondent(s)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.07.2026 made in IA No.1 of 2023 in IA No.254 of 2020 in OS No.148 of 2020 on the file of the Subordinate Court, Palacode and allow this Civil Revision Petition.

For Petitioner(s): Mr.G.Anbil Magesh

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India challenging the order dated 08.07.2026 made in IA No.1 of 2023 in IA No.254 of 2020 in OS No.148 of 2020 on the file of the

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Subordinate Court, Palacode, wherein the application filed by the petitioner/defendant for scrapping the report and for appointment of a fresh Advocate Commissioner came to be dismissed by the Court below.

2.Heard the learned counsel for the petitioner and carefully perused the materials available on record and this Court also carefully went through the order passed by the Court below.

3.The respondent is the plaintiff who filed the suit in O.S.No.148 of 2020 seeking for the relief of permanent injunction restraining the 1st defendant from interfering with the possession and enjoyment of the property and for a direction to the revenue officials to survey the property and issue patta in the name of the plaintiff.

4.The plaintiff seems to have filed IA No.254 of 2020 for appointment of an Advocate Commissioner to identify the boundaries. The Court below also allowed the application, and an inspection was conducted by the Advocate Commissioner, who filed a report. Both sides filed their objections to the report submitted by the Advocate Commissioner. Under such circumstances, the petitioner/defendant filed IA No.1 of 2023 to scrap the report of the Advocate Commissioner and to appoint a fresh Advocate Commissioner to conduct an

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inspection and to submit a report along with a plan. This application came to be dismissed by the Court below and aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

5.This is yet another case where the parties are not making any progress in the suit and the parties are agitating the suit merely based on the report of the Advocate Commissioner for the last six years. Admittedly, the suit has been filed seeking for the relief permanent injunction. Such relief has been sought for by the plaintiff by placing reliance upon certain documents. Therefore, the burden of proof is upon the plaintiff to establish his right. There was absolutely no occasion for the Court below to appoint an Advocate Commissioner even at the outset without making any progress in the suit. Such appointment and the report filed by the Advocate Commissioner has resulted in both sides filing their objections to the report of the Advocate Commissioner. However, till date, the suit is at the stage of framing of issues. Therefore, the Court below does not have the advantage of the evidence let in by both sides and the Court below and the parties are dabbling with the report of the Advocate Commissioner.

6.As was observed in the earlier orders passed by this Court, there is a pattern that is discernible in many suits involving immovable properties, wherein there is no progress in the suit and the parties do not let in evidence.

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Instead, the appointment of an Advocate Commissioner and the report filed by the Advocate Commissioner are continuously agitated by both parties for years together and as a result, the suit remains pending, sometimes for decades together. This mindset of commencing the proceedings with a report of the Advocate Commissioner should be changed. This Court has repeatedly held that unless there is an urgency to appoint an Advocate Commissioner to make an inspection, the appointment of an Advocate Commissioner must be kept pending and the Court must first record the evidence let in by both sides. After the evidence is recorded and the documents are marked, the Court has to take a decision as to whether the report of an Advocate Commissioner will be required for the Court to effectively dispose of the suit. That is the stage when the Court has to actually apply its mind on the application filed for appointment of an Advocate Commissioner. Ultimately, the report of the Advocate Commissioner is only another piece of evidence and a case is never decided exclusively based on the report of the Advocate Commissioner. For some reason, many suits involving immovable properties progresses only based on the report of the Advocate Commissioner, which defeats the very object of Order XXVI Rule 9 of C.P.C. This provision was not incorporated into the C.P.C., for procuring evidence and thereafter developing a case based on the report. Unless and otherwise this mindset is changed, the suits filed before the Courts below will never be disposed of and one way or the other, either of the parties will

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repeatedly approach this Court and file Civil Revision Petitions, either challenging the order appointing an Advocate Commissioner, or challenging an order dismissing or allowing an application to scrap the report of the Advocate Commissioner and appoint a new Advocate Commissioner, or challenging an order dismissing or allowing an application to reissue the warrant to get an additional report. This procedure adopted by many of the Courts below is clogging the system and there is no effective disposal of suits in the Subordinate Courts.

7.In the case is hand, the suit has been filed for permanent injunction. Therefore, the burden of proof is upon the plaintiff to establish that he is in possession and enjoyment of the property by letting in oral and documentary evidence. Without doing so, the plaintiff files an application for appointment of an Advocate Commissioner and that application is mechanically allowed by the Court below and a report is filed over which both parties have submitted their objections. As a consequence, one of the parties viz., the defendant, has filed an application to scrap the report of the Advocate Commissioner and to appoint a fresh Advocate Commissioner. Sadly, in this process, which has been going for the last six years, even issues have not been framed in the suit. In the last few months, I have passed similar orders in many Civil Revision Petitions.

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8.In the light of the above discussion, there is no requirement to scrap the report and to appoint a fresh Advocate Commissioner at this stage. The Court below shall proceed to frame the issues and record the evidence let in by both sides. Already, a report has been filed by an Advocate Commissioner for which both sides have submitted their objections. Therefore, those objections can be taken into consideration and if required, the Advocate Commissioner can be put in the witness box to be examined by both sides. After this process is completed, the Court below shall first apply its mind on the evidence that has been let in by both sides. Thereafter, there are broadly three options that are available to the Court below. The first option is to decide the case only based only on the evidence that is let in both both sides, even without placing specific reliance upon the report of the Advocate Commissioner. The second option is to place reliance upon the report of the Advocate Commissioner after considering the objections made by both sides and see whether it can be used as a corroborative piece of evidence to effectively dispose of the suit on merits. The third option is, if the Court wants to completely scrap the report and appoint an Advocate Commissioner to get a report afresh, or the Court wants to reissue the warrant and get an additional report by defining the scope of revisit of the Advocate Commissioner, the same can be done by the Court below if it helps the Court below to dispose of the suit more effectively.

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9.The above observations shall be kept in mind by the Court below and the Court below is directed to proceed further with the main suit. The order passed by the Court below is sustained.

10.In the result, this Civil Revision Petition stands disposed of in the above terms. There shall be a direction to the Subordinate Court, Palacode, to dispose of the suit in OS No.148 of 2020, within a period of six months from the date of receipt of copy of this order. No Costs.

11.A copy of this order shall be placed by the Registry before the Hon'ble Committee in charge of the Tamil Nadu Judicial Academy in order to arrange for a special session to the Judges belonging to the Subordinate Judiciary as to how they must deal with applications filed for appointment of an Advocate Commissioner in cases involving immovable properties. Such an awareness programme will enable the Subordinate Court to effectively deal with the applications without sacrificing the progress to be made in the main suit.

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Index: Yes
Speaking order
Neutral Citation: Yes
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2026:MHC:4728

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N.ANAND VENKATESH, J.

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To

1.The Subordinate Court, Palacode.

Copy to

The Registrar (General),
High Court of Madras.

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