



C.R.P. (MD) Nos. 138 & 139 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.01.2026

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THE HON'BLE MR. JUSTICE **N.SENTHILKUMAR**

C.R.P.(MD)Nos.138 and 139 of 2022
and
C.M.P.(MD)No.614 of 2022

P.Marimuthu

... Petitioner in both petitions

-VS-

1.The Tahsildar,
Tahsildar Office,
Eral, Thoothukudi District.

2.The District Collector,
Collectorate, Thoothukudi District.

... Respondents in both petitions

Common Prayer:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.12.2021 passed in I.A. No. 7 and 8 of 2021 in O.S. No. 50 of 2018 before the District Munsif Court, Srivaikundam by allowing this Civil Revision Petitiona.

For Petitioner : Mr. D.Nallathambi

For Respondents : Mr. P.Thambidura

Government Advocate

(in both petitions)



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COMMON ORDER

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These Civil Revision Petitions challenge the orders, dated 03.12.2021, passed in I.A.Nos.7 and 8 of 2021 in O.S.No.50 of 2018 before the District Munsif Court, Srivaikundam (hereinafter referred to as the 'Trial Court' for short).

2.The parties are hereinafter referred to as their description in the suit in O.S.No.50 of 2018 before the Trial Court for the sake of clarity and convenience.

3.Heard Mr.D.Nallathambi, learned Counsel for the plaintiff and Mr.P.Thambidurai, learned Government Advocate for the defendants and perused the materials placed on record apart from the pleadings of the parties.

4.The suit in O.S.No.50 of 2018 has been filed seeking permanent injunction restraining the defendants from disturbing the possession of the plaintiff in respect of the suit schedule property in S.F.Nos.71/1 and 71/2. An Advocate Commissioner was earlier appointed by order passed in I.A.No.6 of 2019 and he had submitted a report. However, they have not done any



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measurement. In that backdrop, the defendants, after recording of evidence, when the matter was posted for judgment, had filed the applications in I.A.Nos. 7 and 8 of 2021 to re-issue warrant to the Advocate Commissioner to measure the property.

5.The Trial Court, by the impugned order, dated 03.12.2021, has held that it is required to find out the encroachment in S.F.Nos. 71/1 and 71/2 so as to decide the matter in an effective manner and also taken into account the fact that the Commissioner during the earlier inspection of the property could not measure the property. The object of appointment of a commission is to enable the Court to effectively adjudicate the matter, based on the inspection report submitted by the parties. At the same time, the report of the Advocate Commissioner cannot be conclusively proved and it is always open to the parties to raise their objections and contradict the same by other evidence.

6.This Court does not find any reason to interfere with the impugned order, especially when Section 105(1) and clause (1) of Rule 1-A of XLIII of the Code of Civil Procedure, 1908, read as follows:-



Section 105(1) of CPC

Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Rule 1-A(1) of Order XLIII of CPC

Right to challenge non-appealable orders in appeal against decrees.—(1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

7. At this juncture, reference must be made to the decision of the Hon'ble Supreme Court of India in the decision in *Shalini Shyam Shetty -vs- Rajendra Shankar Patil* [(2010) 8 SCC 329], in which the principles on the exercise of the supervisory jurisdiction of the High Court under Article 227 of the Constitution has been formulated in the following words:-



- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
- (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.



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- (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in **Waryam Singh -vs- Amarnath** (AIR 1954 SC 215) and the principles in **Waryam Singh -vs- Amarnath** (AIR 1954 SC 215) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in **Waryam Singh -vs- Amarnath** (AIR 1954 SC 215), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.
- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.



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- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.
- (h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words, the jurisdiction has to be very sparingly exercised.
- (i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in ***L. Chandra Kumar -vs- Union of India*** [(1997) 3 SCC 261] and therefore abridgment by a constitutional amendment is also very doubtful.



- (j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.
- (k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised *suo motu*.
- (l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.
- (m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of



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the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.

8. Having regard to the aforesaid legal position *viz-a-viz* the impugned order and the materials placed on record, there does not appear to be any infirmity warranting any interference in the exercise of the supervisory jurisdiction by this Court. Further, the contention raised by the plaintiff do not fall within any of the subject limits by which, it requires interference of this Court under Article 227 of the Constitution of India. However, it shall be ensured by the Trial Court that the Advocate Commissioner shall complete his work and submit a report within a period of 30 days from the date of receipt of a copy of this order. It shall also be ensured by the Trial Court that there is atleast one effective hearing every week showing progress of the case and quarterly reports in that regard shall be sent to the Registrar (Judicial) of the Court till final orders are passed in the case.



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9. In the result, this Civil Revision Petitions are dismissed with the aforesaid clarification. Consequently, connected miscellaneous petition is closed. No costs.

21.01.2026

Index : Yes/No
Internet : Yes/No

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To

1. The District Munsif Court, Srivaikundam.

2. The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SENTHILKUMAR, J.

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