



C.R.P.(MD)No.467 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.467 of 2023

and

C.M.P.(MD)No.2233 of 2023

Krishnamoorthy

... Petitioner

-VS.-

Dhakshinamurthy

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order, dated 31.01.2020 passed in I.A.No.41 of 2019 in O.S.No.79 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruvudaimarudur.

For Petitioner :Mr.M.P.Senthil

For Respondent :Mr.S.Paulmuruges



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ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned District Munsif-cum-Judicial Magistrate, Thiruvidadaimarudur, in I.A.No.41 of 2019 in O.S.No.79 of 2019, dated 31.01.2020.

2.Heard Mr.M.P.Senthil, learned Counsel for the Revision Petitioner and Mr.S.Paulmurugesh, learned Counsel for the respondent.

3.The petitioner, as plaintiff, has filed a suit in O.S.No.79 of 2019 before the District Munsif-cum-Judicial Magistrate, Thiruvidadaimarudur, for permanent injunction and for other reliefs. During the pendency of the suit, the petitioner herein has filed an application in I.A.No.41 of 2019 under Order 26 Rule 9 r/w Section 151 of CPC to appoint an Advocate Commissioner to measure the suit property and the defendant's property with the assistance of the Surveyor. The learned District Munsif-cum-Judicial Magistrate, Thiruvidadaimarudur, vide impugned order, dated 31.01.2020, had dismissed the



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said application by holding that the petitioner has not made out a case for appointment of Advocate Commissioner and the the petitioner has to prove his possession only through trial and not through the Advocate Commissioner. Challenging the same, the present application has been filed.

4.The learned Counsel for the petitioner reiterated the contentions in the grounds of revision and submitted that even though the earlier application filed by the petitioner for appointment of Advocate Commissioner was allowed, the Advocate Commissioner could not file his report, as the Surveyor has not rendered his assistance. Hence, the petitioner has again file the present application, which has been dismissed by the trial Court on the ground that earlier already an advocate Commissioner was appointed, which is *per se* illegal and that the petitioner has no intention to collect evidence by way of appointment of Advocate Commissioner and he is only seeking to survey the lands of the parties, which has been erroneously dismissed by the trial Court, which needs interference of this Court.

5.*Per contra*, the learned Counsel for the respondent submitted that the



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petitioner herein for the very same relief has already filed an application and the same was already allowed and the petitioner again has now filed the present application, which has been rightly rejected by the trial Court, which does not warrant any interference of this Court and hence, he seeks dismissal of this petition.

6.This Court considered the submissions made on either side and perused the documents available on record.

7.From the records, it is revealed that an application was filed for appointment of Advocate Commissioner to inspect the property and file a report with the assistance of the surveyor. The trial Court had come to the conclusion that the appointment of Advocate Commissioner is only for collection of evidence. However, this Court is of the view that the claim made seeking for appointment of Advocate Commissioner is only to inspect the property with the assistance of the surveyor. The conclusion arrived at by the trial court is unfounded and unreasonable and without looking into the merits of the case.



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8.In the result, the Civil Revision Petition is allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Thiruvidadaimarudur, in I.A.No.41 of 2019 in O.S.No.79 of 2019, dated 31.01.2020, is hereby set aside. The trial Court shall appoint a new Advocate Commissioner to survey the land with the assistance of the surveyor and the newly appointed Advocate Commissioner shall file a report before the Court below within a period of six months from the date of appointment of the Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2026

Internet :Yes/No
NCC :Yes/No
Index :Yes/No
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To

The District Munsif-cum-Judicial Magistrate,
Thiruvidadaimarudur.



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N.SENTHILKUMAR, J.

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