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C.R.P.(MD)No.579 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2026

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THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.579 of 2024

and

C.M.P.(MD)No.2875 of 2024

1.Adaikkappan

2.Pandiyan

... Petitioners

-VS.-

1.Devi

2.Banumathi

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the impugned fair and decreetal order, dated 12.12.2023 in I.A.No.2 of 2022 in O.S.No.48 of 2022 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioners	:Mr.R.Paranjothi for M/s.KBS Law Associates
For R1	:No appearance
For R2	:Ms.M.Rathna for Mr.N.Balakrishnan



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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, Thirumayam, in I.A.No.2 of 2022 in O.S.No.48 of 2022, dated 12.12.2023.

2.Heard Mr.R.Paranjothi, learned Counsel for the Revision Petitioners and Ms.M.Rathna, learned Counsel representing Mr.N.Balakrishnan, learned Counsel for the second respondent.

3.The petitioners herein, as plaintiffs, have filed a suit in O.S.No.48 of 2022 before the District Munsif cum Judicial Magistrate Court, Thirumayam, for bare injunction and for other reliefs against the respondents herein. During the pendency of the trial, the petitioners have filed an application in I.A.No.2 of 2022 under Section 26 Rule 9 of CPC to appoint an Advocate Commissioner to inspect the suit property. After hearing the parties, the learned District Munsif cum Judicial Magistrate, Thirumayam, vide impugned



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order, dated 12.12.2023, had dismissed the said application on the ground that the interim injunction granted was dismissed on 12.12.2023 and that the ground raised by the petitioners is no longer exists. Challenging the same, the present Civil Revision Petition has been filed.

4.The learned Counsel for the petitioners submitted that the trial Court has not considered the averments made by the petitioners in the affidavit filed for appointment of an Advocate Commissioner and that without considering those facts, the trial Court has erroneously passed the impugned order. He also submitted that the prayer sought for by the petitioners is only to measure the property with metes and bounds and that there is no intention on the part of the petitioners to drag on the proceedings. However, the trial Court by observing that as the interim injunction has been vacated, there is no ground for appointment an Advocate Commissioner, is against law. It his further contention that the trial Court has passed the impugned order erroneously, which needs interference of this Court.



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5.*Per contra*, the learned Counsel for the second respondent submitted that the trial Court has passed the impugned order after considering the entire evidence available on record. It is her further submission that the petitioners have filed the present application only to drag on the proceedings and only with an intention to humiliate the respondents. She vehemently contended that under the guise of injunction application, the revision petitioners are attempting to carry out so many changes in the suit schedule property and therefore, the rejection of application for appointment of Advocate Commissioner has been rightly passed. She further submitted that filing of the present application is only to collect evidence and that the trial Court has rightly passed the impugned order and there is no infirmity in the order passed by the trial Court, which does not warrant interference of this Court.

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

7.Admittedly, the petitioners have filed a suit in O.S.No.48 of 2022



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against the respondents for bare injunction. During the pendency of the suit, the petitioners have filed an application to appoint an Advocate Commissioner to inspect and measure the suit property and file a report with the assistance of the Surveyor. However, the trial Court has rejected the claim of the petitioners. The ground for rejection is that the petitioners have prayed for appointment of Advocate Commissioner in view of ad interim injunction, however, since the ad interim injunction has been vacated, there is no necessity for the Court to appoint an Advocate Commissioner. This Court is of the view that the petitioners have prayed for appointment of Advocate Commissioner only to visit and measure the suit property and not for any other purpose. The contention of the learned Counsel for the second respondent that the present application has been filed only to collect evidence cannot be accepted, as measuring the suit property will not give any evidence to the petitioners in the suit and that the said contention is rejected. Further, appointment of Advocate Commissioner and filing of Advocate Commissioner's report will not cause any serious prejudice to the parties to the *lis*.



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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, Thirumayam, in I.A.No.2 of 2022 in O.S.No.48 of 2022, dated 12.12.2023, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2026

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

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To

The District Munsif cum Judicial Magistrate, Thirumayam.



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N.SENTHILKUMAR, J.

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