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A No. 6228 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 17-02-2026**

CORAM

**THE HON'BLE MR.JUSTICE P. DHANABAL**

**A No. 6228 of 2025**

**IN CS NO. 730 OF 2019**

N. Anusuya Devi W/o.Sambasiva Rao.

..Applicant(s)

Vs

1. S.Nirmala Devi W/o.C.J.Suresh.
2. N.Madhava Rao S/o.M.A.V.Narayana Rao
3. M.Aravind Kumar S/o.Madhava Rao
4. M.Gopinath S/o.N.Madhava Rao.

..Respondent(s)

**PRAYER:** This application has been filed under Order XIV Rule 8 of High Court Original Side Rules read with Order XXVI Rule 9 of Code of Civil Procedure praying to appoint an advocate commissioner to inspect and measure Schedule II and III with the help of surveyor.

For Applicant(s):

Mr. Srinath Sridevan, Senior Counsel for  
M/s.Bhagavath Krishnan

For Respondent(s):

Mr. P.V. Balasubramanian, Senior Counsel  
for Mr. T.N. Rajagopalan [for R2 to R4]

Mr. Sirish Choudhary  
for Mr. T.M. Naidu [for R1]

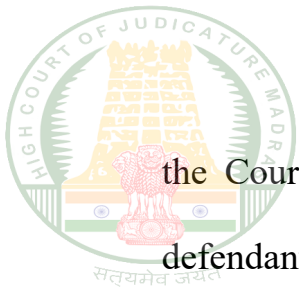


## **ORDER**

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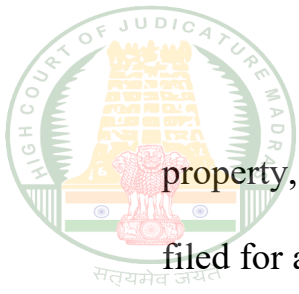
This application has been filed by the applicant to appoint an Advocate Commissioner to inspect and measure Schedule II and III with the help of surveyor.

2. According to the applicant, she is the 4<sup>th</sup> defendant in the main Suit and the Suit schedule II and III properties are adjacent properties in Kazhipattur Village. Schedule III has residential premises built up by her father, where certain illegal and unauthorized shops were built and let out by the 1<sup>st</sup> defendant. Further, a School namely Zing International Pre School and Daycare was also constructed by the 1<sup>st</sup> defendant. A portion of 2<sup>nd</sup> Schedule is a vacant land. The front portion of the said property contains three illegal and unauthorized shops, which have been built and let out by the 1<sup>st</sup> defendant. There was also a Wall which demarcated the Schedule II and III properties. The applicant was set exparte on 19.02.2021 and her sister was the Plaintiff and she was under the impression that her sister will take care. Further, the 1<sup>st</sup> defendant had put up construction encroaching the highways adjacent to the Suit Schedule II and III properties. Already a Writ petition in W.P. No.12479 of 2023 was filed and this Court directed the concerned authorities to remove the encroachments and the Tahsildar removed a small portion of the encroachments. Thereafter, the learned counsels appearing for the Plaintiff and the 1<sup>st</sup> defendant assured before



the Court that they have not put up any construction and thereafter, the 1<sup>st</sup> defendant filed an application in A. No.1709 of 2024 sought for a direction to put up a compound wall in the Schedule III property and the same was allowed on 25.03.2024. Thereafter, the applicant initiated steps to set aside the order and sought leave of the Court to file written statement. The construction in Schedule III continued to encroach into the highways. The 1<sup>st</sup> defendant has also encroached into waterbody in Survey No.236 by putting up temporary shed. Therefore, filed this application to note down the physical features with the help of Surveyor.

3. The respondents filed a counter stating that the application is not maintainable either in law or on facts and the same is liable to be dismissed in *limine*. All the allegations made in the affidavit are denied as false. Already after due enquiry, patta has been issued in favour of the respondents 2 to 4. The applicant and the 1<sup>st</sup> respondent have no right in the property. Despite the same, in order to harass the respondents 2 to 4, this application has been filed. Pursuant to the order in A. No.1709 of 2021, a compound wall has been put up and completed. In the applications in O.A. No.869 of 2023 on 18.10.2023 and in A. No.1709 of 2024 on 25.03.2024, orders have been passed in the presence of the counsels. Now, with false allegations, only to delay the proceedings, this application has been filed. The applicant and the 1<sup>st</sup> respondent, without any right, are constantly harassing the respondents 2 to 4 and attempting to grab the

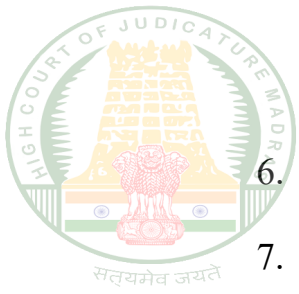


property, in which, they have no right whatsoever. Therefore, this application filed for appointment of Advocate Commissioner, is liable to be dismissed.

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4. The learned Senior counsel appearing for the applicant would submit that the applicant is the 4<sup>th</sup> defendant in the main Suit and she filed applications seeking to set aside the orders passed by this Court in O.A. No.869 of 2023 and A. No.1709 of 2024 dated 18.10.2023 and 25.03.2024 respectively. The respondents have put up construction by encroaching the highways and waterbody. The 1<sup>st</sup> respondent filed an application in A. No.1709 of 2024 seeking to put up the compound wall in the Schedule-III property. This Court also allowed the said petition on 25.03.2024. Already, the applicant filed application to set aside the exparte order passed against her in A. No.1709 of 2024. In the meantime, the respondents are attempting to alter the nature and character of the properties and therefore, the applicant has filed this application to appoint an Advocate Commissioner to note down the physical features with the help of Surveyor and prayed to allow this application.

5. The learned Senior Counsel appearing for the respondents would submit that the applicant has no right over the property and they have not put up any illegal construction either in waterbody or in highways as alleged by the applicant and with the permission of the Court, they put up the compound wall to save the property and only to delay the proceedings, this application has been filed and it has no merits and deserves to be dismissed.



6. Heard both sides and perused the entire materials available on record.

7. It is an admitted fact that the Suit is pending from the year 2019 and now the case is posted for trial. At this stage, the applicant has filed this application for appointment of an Advocate Commissioner and other applications to set aside the exparte order passed by this Court in O.A. No.869 of 2023 and A. No.1709 of 2024. According to the applicant, the respondents encroached upon the Government land i.e., Highways and Waterbody and in order to ascertain those encroachments, the appointment of Advocate Commissioner is necessary. The respondents denied the alleged encroachment and according to the respondents, the 1<sup>st</sup> respondent already obtained order from the Court for construction of a compound wall in the Schedule-III property and there are no any encroachments as alleged in the application. Even according to the applicant, the alleged encroachments are pertaining to the Highways and Water bodies. If so, it is for the concerned authorities to take appropriate steps in accordance with law, if any encroachment is made by the respondents. There is no allegation that the respondents encroached the applicant's land. There is no any allegation that the respondents are making attempts to alter the nature and character of the Suit schedule properties. Once the matter is posted for trial, it is the duty of the parties to conduct the trial. Without examining the witnesses, now filed this application. In view of the same, at this stage, the prayer sought for by the applicant, cannot be considered. Therefore the applicant is not entitled to any relief.



8. In view of the above said discussions, this Court is of the opinion that this application has no merits and deserves to be dismissed.

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9. Accordingly, this application is *dismissed*.

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Index: Yes/No  
Speaking/Non-speaking order  
Neutral Citation: Yes/No

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**P.DHANABAL, J.**

**MJS**

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