



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-08-2026

CORAM

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

A No. 1243 of 2026

in C.S.No.264 of 2006

Swami Gambhiramanada Saraswathi

Door Nos.14 and 16,

Avadanam Papier Road, Choolai,

Chennai 600 112.

..Applicant(s)

Vs

1. Shiv Darshan Yoga Vidyalaya
rep.by its chairman mr.m.nemichand No.59,
Govindappa Naicken Street, Chennai 600 001.

N.Shobhakant Das (deceased)

2. Haresh N Shah No.5, Manickeswari Road,
Kilpauk, Chennai 600 010.

K.Hastimal (decease)

Inderchand Mehta (deceased)

3. Gopal Agarwal No.17, New No.14,
Rajarithnam St, Kilpauk, Chennai 600 010.
4. H.Nemichand Rajendra Enterprises, Rajendra
Towers, II Floor, NO.75, Nyniappa Naicken
Street, Chennai
5. Swami Vajrapani Saraswarhi D.NO. 14 and 16
AVADANAM PAPIER RD., CHOOLAI,
CH-112
6. Shri Sunku Subbu LazmaniyaS/o.Rama
Laxmaniya, No.1-A, Srivari Trust Stone
Apartment, No.10, Vasu Street, Kilpauk,
Chennai 600 010.
7. Swami Haripremandan SaraswathiS/o.Rama
Laxmaniya
8. C.R.TyagarajanS/o.Late M.Ramaswamy,
Shivananda Darshan Yoga Ashram, Sangam



- Colony, Reeve Road, Satna, Madhya Pradesh
9. Swami Harishradhananda Saraswathi Satna
Shivananda Darshan Yoga Ashram,
Sangram Colony, Reeve Road,
Satna (Madhya Pradesh)
10. Sanyasi Vyasana H.No.1/10, Arvind Vihar,
Bagh Muglia, Housing Board Colony, Bhopal
M.P.
- 11 Srimathi Sudha Gupta
W/o. Madhusudhan Gupta, Block No.C-2,
Flat No.10, 64, Ratna Vel Pandian Road,
G.G.Nagar, Chennai 600 107
- 12.D.Jayalakshmi
D/o.G.Durai Raj, 130, Barakh Road,
Varadhammal Garden, Kilpauk,
Chennai 600 010
- 13.Mr.K.K.Sood, 5th Floor, Radha shyam
Apartments, 95. Marshall Road, Egmore,
Chennai 600 008.
- 14.Swami Chitsukhananda Saraswathi Door
NO.14 and 16 Avadanam Pappier Road,
Choolai, Chennai 600 112.
- 15.P.Vishwanatha S/o.P.Parameswaran

..Respondent(s)

A No. 1243 of 2026

To appoint an Advocate Commissioner for the Applicant/2nd Defendant be examined as DW1 in the above suit at her residence who is residing at Door Nos.14 and 16, Avadanam Pappier Road, Choolai, Chennai 600 112.

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For Applicant(s):	MR.R. Ramanlal
For Respondent(s):	Mr.K.V.Bhashyam Chari for R1 to R4 Mr.T.V.Krishnamachari for R5



Order

The captioned Application in A.No.1243 of 2026 in C.S.No.264 of 2006 is filed by the 2nd defendant to appoint an Advocate Commissioner to examine her as D.W.1 in the above suit at his residence. The above suit has been filed for the relief of framing a scheme of management for the 1st plaintiff Trust and other relief as set forth in the plaint.

2. In the above suit the evidence of the plaintiffs have been concluded and the suit is posted for the evidence of the contesting defendants. At this stage, the present application has been filed.

3.The present application has been filed by the 2nd defendant seeking appointment of an Advocate Commissioner for recording her evidence on the ground that he is suffering from hypertension and exertional Angina and that, on account of her medical condition, he is advised to avoid travelling and crowded places.

4.The learned counsel for the applicant/2nd defendant submits that since the 1st defendant being a senior swamiji largely engaged in spirituality and continuous prayer, yoga. He is unable to attend the Court for adducing evidence. Hence, the applicant/2nd defendant will be examined as D.W.1 in the



above suit and that the Medical Certificate dated 13.01.2026 enclosed along with this application would reveal the physical condition of the applicant. The learned counsel would further submit that if an application to examine a party on commission supported by a Medical Certificate as to the illness and inability of the party due to old age, the same has to be allowed, for which he has relied upon the judgment in the case of *Lakshman and Others Vs. Ellammal and others* reported in 1978 (2) MLJ 280

5.The said application is resisted on the side of the respondent/plaintiff contending that the Medical Certificate relied upon by the applicant does not disclose any medical incapacity which prevents her from appearing before the Court and giving evidence. It is further contended that there is no medical opinion to the effect that he is unable to travel to the Court or that her physical condition makes her attendance before the Court hazardous.

6.The learned counsel appearing for the respondent would submit that mere inconvenience cannot be a reason for praying for appointment of Advocate Commissioner for recording evidence. It is a deliberate dilatory tactics to avoid entering into witness box and delay the suit proceedings. Since the applicant has filed the written statement, he is a necessary witness to be testified by entering into witness box. He would further submit that the Medical Certificate produced on the side of the applicant is not convincing. The



applicant failed to establish his incapacity to travel. The mere fact that the applicant is suffering from hypertension and exterior Angina and had been advised to avoid physical exertion and crowded places is not a sufficient ground justifying recording of the evidence by appointing Advocate Commissioner. He would further submit that when sickness is alleged, the gravity of the sickness has to be assessed. At the same time, the importance of having the witness/party before the Court and the advantages that would follow from examination in the Court should not be altogether lost sight of. Further, the Medical Certificate, which was relied on by the applicant did not warrant examination by appointing an Advocate Commissioner. To support his contention, he has relied upon the judgement in the case of *P.Kaliappa Gounder V. M.Loganathan & Others* reported in *CDJ 2005 MHC 1349* and *M.O.H. Aslam Versus M.O.H. Iqbal & Others* reported in *CDJ 2025 MHC 5519*.

7.I have considered the rival submission.

8.The power of the Court to appoint a Commissioner for recording evidence is intended, inter alia, to prevent inconvenience and hardship to a witness where the circumstances of the case so warrant. The Court is required to balance the convenience and medical condition of the witness with a right of the opposite party to effectively participate in the recording of evidence and to cross examine the witness.



9. In the present case, the applicant/2nd defendant has placed before the Court a medical Certificate indicating that he is suffering from hypertension and exertional Angina and that he should avoid travelling in crowded places. The certificate does not state that he is incapable of travelling to the Court, that he is medically unfit to give evidence before the Court, or that her appearance before the Court would endanger her health.

10. The mere fact that a person is suffering from hypertension or Angina cannot, by itself, be treated as sufficient ground for appointing an Advocate Commissioner to record evidence. There must be some acceptable medical material establishing the necessity for such exceptional procedure.

11. This Court is also conscious of the fact that recording evidence through a Commissioner should not unnecessarily prejudice the opposite party. The plaintiff is entitled to have the evidence recorded in the ordinary course and to effectively participate in the proceedings. The convenience of a party cannot, by itself, override the normal procedure of trial.

12. In the present case, I find that the Medical Certificate relied upon by the applicant/2nd defendant does not furnish sufficient justification for appointing an Advocate Commissioner. The Applicant has failed to establish that he is unable to attend the Court or that her medical condition warrants recording her evidence at a place other than the Court.

13. Accordingly, the application is dismissed.



14. However, it is made clear that this order shall not preclude the applicant/2nd defendant from seeking appropriate relief at a later stage if he medical condition materially deteriorates or if he produces a specific and satisfactory medical opinion from a competent Medical practitioner establishing that he is medically unable to travel to the Court or that her attendance before the Court would involve serious medical risk. There shall be no order as to costs.

15. Registry is directed to place the matter before the Master for recording of evidence.

13-08-2026
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Index: Yes/No Speaking/Non-speaking order
Neutral Citation: Yes/No

VSN



To

1. Shiv Darshan Yoga Vidyalaya and 14 others REP. BY ITS CHAIRMAN MR. M. NEMICHAND No. 59, Govindappa Naicken Street, Chennai 600 001.
2. Haresh N Shah No. 5, Manickeswari Road, Kilpauk, Chennai 600 010.
3. Gopal Agarwal Omkar Apartments No. 17, New No. 14, Rajarathnam St, Kilpauk, Chennai 600 010.
4. H. Nemichand Rajendra Enterprises, Rajendra Towers, II Floor, NO. 75, Nyniappa Naicken Street, Chennai
5. Swami Vajrapani Saraswarhi D. NO. 14 and 16 AVADANAM PAPPIER RD., CHOOLAI, CH-112
6. Sunku Subbu Lazmaniya S/o. Rama Laxmaniya, No. 1-A, Srivari Trust Stone Apartment, No. 10, Vasu Street, Kilpauk, Chennai 600 010.
7. Swami Haripremandan Saraswathi S/o. Rama Laxmaniya
8. C. R. Tyagarajan S/o. Late M. Ramaswamy, Shivananda Darshan Yoga Ashram, Sangam Colony, Reeva Road, Satna, Madhya Pradesh
9. Swami Harishradhananda Saraswathi Satna
10. Sanyasi Vyasanda H. No. 1/10, Arvind Vihar, Bagh Muglia, Housing Board Colony, Bhopal M.P.
11. Sudha Gupta W/o. Madhusudhan Gupta, Block No. C-2, Flat No. 10, 64, Ratna Vel Pandian Road, G.G. Nagar, Chennai 600 107
12. D. Jayalakshmi D/o. G. Durai Raj, 130, Barakh Road, Varadhammal Garden, Kilpauk, Chennai 600 010
13. Mr. K. K. Sood S/o. P. C. Sood, 5th Floor, Radha shyam Apartments, 95. Marshall Road, Egmore, Chennai 600 008.
14. Swami Chitsukhananda Saraswathi Door NO. 14 and 16 Avadanam Pappier Road, Choolai, Chennai 600 112.
15. P. Vishwanatha S/o. P. Parameswaran



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K.GOVINDARAJAN THILAKAVADI J.

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