



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2018

Coram:

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**THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN**

C.R.P(PD) (MD) .No.910 of 2018  
and C.M.P. (MD) No.4004 of 2018

1.Samikannu  
2.V.Chellaiah  
3.P.Alagarsamy  
4.M.Pitchai

... Petitioners/Petitioners/Plaintiffs

**Vs.**

1. The District Forest Officer,  
District Forest Office,  
Pudukkottai.  
  
2. The District Collector,  
Pudukkottai.  
  
3. The Special Tahsildar,  
Forest Settlement Officer,  
Thiruchirappalli.

.. Respondents/Respondents/Defendants

**PRAYER:** Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 20.02.2018 made in I.A.No.617 of 2017 in O.S.No.102 of 2007 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioner : Mr.G.Sridharan  
For R1 to R3 : M/s.VPM.Vaishnavi,  
Government Advocate

### **O R D E R**

This Civil Revision Petition is filed against the fair and decreetal order dated 20.02.2018 made in I.A.No.617 of 2017 in O.S.No.102 of 2007 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

2. The petitioner, who is the plaintiff, has filed the suit in O.S.No. 102 of 2007 for declaration and injunction. In the said suit, he has filed I.A.No.617 of 2017 for appointment of an Advocate Commissioner and the said application was dismissed by the learned



District Munsif cum Judicial Magistrate, Thirumayam on 20.02.2018. Challenging the said order, the present Civil Revision Petition has been filed.

3. Heard both sides.

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4. The learned counsel for the petitioner would mainly argue on the ground that the appointment of Advocate Commissioner is necessary since the suit is filed for declaration and consequential injunction. He would further submit that the court below erred in dismissing the application.

5. The learned Government Advocate appearing for the respondents 1 to 3 would submit that the survey number mentioned in the plaint and in the petition filed in I.A.No.617 of 2017 is entirely different and therefore, she sought for dismissal of this petition.

6. Appointment of Advocate Commissioner is necessary even in the bare injunction suit. In the case on hand, the suit in O.S.No.102 of 2007 is filed by the plaintiff for declaration and consequential injunction. Therefore, in the considered opinion of this Court, appointment of Advocate Commissioner is very necessary.

7. Considering the facts and circumstances of the case, the order passed by the learned District Munsif, Thirumayam, in I.A.No.617 of 2017 warrants interference by this Court. Therefore, this Court is inclined to set aside the order passed in I.A.No.617 of 2017 is set aside. Accordingly, the same is set aside.

8. While setting aside the order, this Court issues the following direction:

i) The learned District Munsif cum Judicial Magistrate, Thirumayam is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order.

ii) The Advocate Commissioner is directed to visit the place and file a report within a period of four weeks thereafter by giving notice and receiving the objections by both parties.

Iii) After filing the report by the Commissioner, the trial court is directed to dispose of the suit within a period of four months thereafter.

9. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P(MD) No.4004 of 2018 is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/



1.The District Munsif cum Judicial Magistrate,  
Thirumayam.

2.The Section Officer, V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 Copies)

+ 1 CC TO Mr.G.SRIDHARAN, ADVOCATE IN SR No. 68344  
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68463

CM

TE/SKN-RSK/SAR-1 : 29/06/2018 : 3P/6C

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