



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.11.2021

CORAM :

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

C.R.P. (MD)No.1682 of 2021

and

C.M.P. (MD)No.9074 of 2021

Parvathi Pillai ... Petitioner / 1<sup>st</sup> Respondent /  
2<sup>nd</sup> Defendant

Vs.

1.Neelaka Pillai @ Sakunthala ... Respondent / Petitioner /  
Plaintiff

2.P.Krishnammal ... Respondent / 2<sup>nd</sup> Respondent /  
3<sup>rd</sup> Defendant

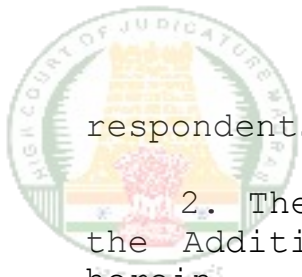
3.Erachakulam Grama Samudhayam Trust  
Represented by its Managing Trustee,  
Mr.Regupathi Iyer,  
S/o.Vaidhayanathan,  
Erachakulam Village,  
Thovalai Taluk,  
Kanyakumari District. ... Respondent / 3<sup>rd</sup> Respondent /  
4<sup>th</sup> Defendant

**PRAYER:** Petition filed under Section 227 of Constitution of India, to set aside the order passed by the trial Court in I.A.No.385 of 2018 in O.S.No.108 of 2011 on the file of the 1<sup>st</sup> Additional Subordinate Judge, Nagercoil, Kanyakumari District, dated 03.08.2021 filed under Section 151 and Order 26 Rule 9 of C.P.C and allow the civil revision petition.

For Petitioner : Mr.Karuppiah  
for Mr.G.Anto Prince

**ORDER**

Heard the learned counsel appearing for the petitioner.  
<https://hcservices.hcservices.gov.in/hcservices/> Considering the nature of relief to be granted, notice to the



respondents is dispensed with.

2. The second defendant in O.S.No.108 of 2011 on the file of the Additional Sub Court, Nagercoil is the revision petitioner herein.

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3. The first respondent herein namely Neelaka Pillai @ Sakunthala filed the said suit seeking the relief of partition. On 09.02.2018, preliminary decree was passed for granting 1/3<sup>rd</sup> share in the tenancy right in favour of the plaintiff. The tenancy right is the subject matter of the suit. Aggrieved by the same, the revision petitioner filed A.S.No.130 of 2018 on the file of the First Additional District and Sessions Judge, Nagercoil. The first appeal is still pending. In the mean while, the plaintiff filed I.A.No.385 of 2018 on the file First Additional Sub Judge, Nagercoil for appointing an advocate commissioner. In the said I.A., the trial court has passed an order on 03.08.2021 appointing an advocate commissioner. Challenging the same, this civil revision petition has been filed.

4. The learned counsel for the petitioner submitted that the first appeal is not being taken up because the post of presiding officer is presently lying vacant. He would further submit that the trial court has passed preliminary decree without taking note of the fact that the landlord / Trust had already transferred the tenancy right in favour of the revision petitioner. His apprehension is that misconstruing the nature of the impugned order, they may cancel the right that was already transferred in favour of the revision petitioner. The apprehension of the revision petitioner can be allayed by directing the third respondent herein to abide by the outcome of the first appeal. Even in a regular first appeal, when a preliminary decree made in the partition suit is challenged, the standard interim order that will be passed by any first appellate court is to stay the passing of the final decree alone. The other supplementary proceedings are always allowed to go on. Therefore, the order passed by the learned trial judge appointing advocate commissioner cannot be faulted or interfered with. The advocate commissioner can proceed with his task and the final decree will of-course be passed after the first appeal is disposed of.

5. The third respondent is directed to await the outcome of the first appeal filed by the revision petitioner. The Principal District Judge, Kanyakumari is requested to ensure that the first appeal filed by the revision petitioner will be disposed of on merits and in accordance with law within a period of five months from the date of receipt of a copy of this order. I make it clear that no opinion on merits has been expressed. The direction given in this petition is only for speedy disposal. This Civil



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Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

**NOTE:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal District Judge, Kanyakumari.

2.The 1<sup>st</sup> Additional Subordinate Judge,  
Nagercoil, Kanyakumari District.

+1 CC to M/s.G. ANTO PRINCE, Advocate (SR-33628[F] dated 02/11/2021)

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NA(CO)

SB/PM (22.11.2021) 3P 4C