



*C.R.P.(MD)No.3049 of 2023*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.11.2023

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

**C.R.P.(MD)No.3049 of 2023**

**and**

**C.M.P.(MD)No.15753 of 2023**

K.Soundarammal

... Petitioner/  
Petitioner/  
Plaintiff

Vs.

M.Marichamy Naidu

... Respondent/  
Respondent/  
Defendant

**Prayer** : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.3 of 2022 in O.S.No.143 of 2021, on the file of the District Munsif Court, Melur, dated 19.09.2023 by allowing this Civil Revision Petition.

For Petitioner : M/s.P.Jessi Jeeva Priya



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## **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.3 of 2022 in O.S.No.143 of 2021 dated 19.09.2023 on the file of the District Munsif Court, Melur, Madurai, dismissing the application filed under Order 26 Rule 1 to 3 C.P.C. for appointment of Advocate Commissioner to examine the revision petitioner.

2. The revision petitioner has filed a suit in O.S.No.143 of 2021 for declaration and that since the respondent had remained *ex parte*, the case was posted for *ex parte* evidence.

3. The learned counsel appearing for the revision petitioner would submit that since the revision petitioner was aged 80 years and suffering from heart ailment disease, she was not in a position to move and she is bed ridden and hence, the above application came to be filed to examine her on commission, but the learned trial Judge, by observing that the revision petitioner has not produced any certificate as contemplated under Order 26 Rule 1 C.P.C., dismissed the application.



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4. The learned counsel appearing for the revision petitioner has produced the medical certificate of the revision petitioner before this Court. But admittedly, medical certificate has not been produced before the trial Court. However, admittedly, the revision petitioner is aged 81 years. The learned counsel appearing for the revision petitioner has relied on the judgment of this Court in ***Nirmala Kamatchi Vs. K.P.M.S.Mariappan and others*** reported in ***CDJ 2018 MHC 6827***, wherein, a learned Judge of this Court has observed,

*“11. Now, the only question stood before me is whether an Advocate Commissioner can be appointed in the present case. I have carefully considered the materials placed before me. It is seen that the first respondent is aged about 60 years at the time of filing of suit in the year 2007 and now, he is about 70 years old. He might be suffering due to old age also. The first respondent, though not filed any medical certificate to substantiate his claim that he is suffering of ailment and it can be visualized as to how difficult, it would be for him to come to the Court to give evidence.”*

5. Considering the age of the revision petitioner and also taking note of the medical certificate produced, this Court is inclined to permit the revision petitioner to be examined on commission. Hence, the impugned



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order dated 19.09.2023 passed in I.A.No.3 of 2022 in O.S.No.143 of 2021 is hereby set aside and the learned District Munsif, Melur, is directed to appoint an Advocate Commissioner to examine the revision petitioner in her residence at Madurai, within a period of one week from the date of receipt of a copy of this order and to fix the remuneration.

6. With the above direction, this Civil Revision Petition is allowed.

Consequently, connected Miscellaneous Petition is closed. No costs.

**23.11.2023**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
csm

**To**

1. The District Munsif Court,  
Melur.
2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**K.MURALI SHANKAR,J.**

csn

**Order made in**  
**C.R.P.(MD)No.3049 of 2023**  
**and**  
**C.M.P.(MD)No.15753 of 2023**

**Dated : 23.11.2023**