



C.R.P.No.5304 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2025

CORAM

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.5304 of 2025
and CMP.No.26712 of 2025

Andammal (deceased)

1.Lakshmi

2.Rajamani

3.Duraisamy

4.Thendabani

... Petitioners / Defendants 2 to 5

[Cause title accepted vide Court order

dated 22.10.2025 made in CMP.No.24959

of 2025 in CRP.SR.No.127709 of 2025]

Vs

1.Shanmugam

Kanthammal (deceased)

... Respondent / Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 01.02.2025 made in I.A.No.6 of 2024 in O.S.No.152 of 2013 on the file of District Munsif Court, Dharapuram by allowing this civil revision petition.



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For Petitioner : Mr.N.Ponraj

ORDER

The civil revision petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioners/defendants seeking for appointment of Advocate Commissioner to note down the physical features of the suit property.

2. The respondents herein filed a suit for partition claiming 1/3 share in the subject property. The suit property has been shown as a vacant site in the plaint. According to the respondents, the patta for the subject property has been given under a scheme of the Government to the father of the first plaintiff and husband of the second plaintiff namely Palani Nadar and to the defendants 1 and 2. On the basis of the said joint patta, the plaintiffs claim 1/3 share in the suit property.

3. The defendants filed a written statement and resisted the suit on the ground that the defendants had put up a house in the subject property fifteen



years ago and they have been in possession and enjoyment of the same.

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4. The defendants filed an application seeking appointment of Advocate Commissioner to note down the physical features, to establish their plea in the written statement that they had put up a building in the subject property. The said application was dismissed by the trial Court. Aggrieved by the same, the petitioners have come before this Court.

5. The learned counsel for the petitioners would submit that there is a serious dispute with regard to the nature of the property and hence, appointment of Advocate Commissioner is absolutely necessary.

6. It is seen from the plaint averment that patta for the subject property was issued by the Government in the year 1995, jointly in favour of the first plaintiff's father Palani Nadar, and defendants 1 and 2. Therefore, the first plaintiff claimed only 1/3 share in the suit site. According to the defendants, they have put up construction in the building and to establish that fact, they seek leave of the Court for appointment of Advocate Commissioner.



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7. In a suit for partition, certainly an Advocate Commissioner will be appointed at the time of final decree proceedings. Even assuming that the defendants had put up a construction in the entire suit property, it will not negate the right of the plaintiffs over the site, if they are able to establish their right over the suit site. If it is the case of the defendants that they have ousted the plaintiffs from the suit property, it is for them to prove the same by producing cogent evidence and to prove the said fact, they cannot resort to appointment of Advocate Commissioner. It is stated in the written statement that the building have been put up by the defendants under a Government scheme. In such circumstances, the defendants are entitled to prove the construction of the building in the suit property by producing documentary evidence. The Advocate Commissioner cannot be appointed to help the defendants to collect the evidence.

8. The trial Court having regard to the nature of the prayer sought for in the plaint and considering the facts and circumstances of the case, rightly came to the conclusion that appointment of Advocate Commissioner is not necessary.



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9. I do not find any error in the impugned order dated 01.02.2025 passed by the learned District Munsif, Dharapuram in I.A.No.6 of 2024 in O.S.No.152 of 2013. Accordingly the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.11.2025

Index : Yes / No

Neutral Citation : Yes / No
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To:

- 1.The District Munsif Court
Dharapuram.
- 2.The Section Officer
VR Section, High Court, Madras.



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S.SOUNTHAR, J.

ds

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