



C.R.P.(MD)No.25 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.25 of 2023

and

C.M.P.(MD)No.146 of 2033

V.Vijayakumari

... Petitioner

-VS.-

Nainarraaj (Died)

- 1.D.Lakshmanaraj
- 2.R.Manimuthuraj
- 3.R.Balakrishnan
- 4.R.Kannan

5.The Government of Tamil Nadu,
represented by the District Collector,
Tirunelveli.

6.The Tahsildar,
Palayamkottai Taluk,
Having office at Kokkirakulam,
Tirunelveli District.

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside fair order and decreetal order passed in I.A.No.6 of 2022 in



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O.S.No.126 of 2015 on the file of the Subordinate Court, Tirunelveli, dated 06.09.2022.

For Petitioner :Mr.H.Arumugam
For R1 to R4 :No appearance
For R5 and R6 :Mr.P.Thambidurai
Government Advocate

ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned Subordinate Judge, Tirunelveli, in I.A.No.6 of 2022 in O.S.No.126 of 2015, dated 06.09.2022.

2.Heard Mr.H.Arumugam, learned Counsel for the Revision Petitioner and Mr.P.Thambidurai, learned Government Advocate for the respondents 5 and 6.

3.The petitioner is the plaintiff in the suit in O.S.No.126 of 2015 on the file of the Subordinate Court, Tirunelveli. The respondents herein are the defendants in the suit. The suit in O.S.No.126 of 2015 has been filed for partition and separate possession of the plaintiff's 1/12th share in the plaint



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schedule property and for permanent injunction and other reliefs.

4.During the pendency of the suit, the petitioner/plaintiff has filed an interlocutory application in I.A.No.6 of 2022 in O.S.No.126 of 2015, under Order 26 Rule 1 r/w Section 151 CPC to appoint an Advocate Commissioner to record the evidence of the petitioner/plaintiff on the ground that the petitioner/plaintiff is suffering from cancer and underwent radio-therapy and she is immovable.

5.The learned Subordinate Judge, Tirunelveli, vide order, dated 06.09.2022, had dismissed the said application on the ground that the petitioner/plaintiff has not produced any relevant documents to substantiate her health condition. Challenging the said order, the present Civil Revision Petition has been filed.

6.The learned Counsel for the Revision Petitioner submitted that the order passed by the Court below is totally erroneous and against law. The learned Counsel further submitted that the Court below has failed to consider that as per Order 26 Rule 1 of CPC, an Advocate Commissioner can be



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appointed to examine the witness, who suffers from sickness or due to infirmity unable to attend the Court. Further, the Court below ought to have considered the medical records produced before it in the interest of justice. Hence, the order passed by the Court below needs interference of this Court.

7.The learned Counsel for the petitioner to substantiate his contentions, has relied upon the judgment of this Court reported in **1999 (1) CTC 729** in the case of **Rasammal vs Nallammal**, wherein, this Court had considered the appointment of Advocate Commissioner to examine a witness, who is residing in the jurisdiction of the trial Court and in the said judgment, the Court has taken into consideration the bedridden and sickness of the petitioner therein and if medical evidences are produced, a liberal approach should be taken in such cases.

8.Considering the facts and circumstances of the case and also considering the submissions made by the learned Counsel for the petitioner, this Court is of the view that the trial Court ought to have taken into consideration the medical evidence that was available with regard to the health



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condition of the petitioner, as she is suffering from cancer and she is undergoing radio-therapy and hence, she is immovable. When the petitioner/plaintiff is suffering from cancer, which is a serious illness, the Court below ought to have taken a liberal approach for appointing the Advocate Commissioner to examine the petitioner/plaintiff. Without considering all these facts, the Court below has passed the impugned order, which is unfounded.

9.In the result, the Civil Revision Petition is allowed. The order passed by the learned Subordinate Judge, Tirunelveli, in I.A.No.6 of 2022 in O.S.No. 126 of 2015, dated 06.09.2022, is hereby set aside. The trial Court shall appoint an Advocate Commissioner of its choice to record the evidence of the petitioner/plaintiff on or before 23.01.2026. Consequently, connected miscellaneous petition is closed.

09.12.2025

Internet	:Yes/No
NCC	:Yes/No
Index	:Yes/No



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To

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3.The Tahsildar,
Palayamkottai Taluk,
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N.SENTHILKUMAR, J.

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