



C.R.P.(PD)(MD).No.312 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.312 of 2022
and
C.M.P.(MD)No.1378 of 2022

K.A.Rengaraj

... Petitioner

Vs.

1.A.G.Manikandan
2.K.R.V.Nathan
3.Arivazhagan
4.Arulalan
5.Balamurugan
6.Kavitha

... Respondents

PRAYER: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the impugned fair and decretal order passed by the Sub Court, Pattukottai in I.A.No.331 of 2019 dated 08.10.2021 and further direct the trial Court to appoint an Advocate Commissioner.

For Petitioner : Mr.N.Marimuthu
for M/s.S.Raja Jeyachandra Paul
For R1 : Mr.S.Meenakshi Sundaram
for Mr.R.T.Arivukumar



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For R6 : Mr.B.Anandan
For R2 to R5 : No Appearance

ORDER

This Civil Revision Petition is filed to set aside the impugned fair and decreetal order passed by the Sub Court, Pattukottai in I.A.No.331 of 2019 dated 08.10.2021 and further direct the trial Court to appoint an Advocate Commissioner.

2.The petitioner is the plaintiff in the suit filed for declaration and recovery of possession in O.S.No.162 of 2012. In that suit, the petitioner filed an application in I.A.No.331 of 2019 for appointment of an Advocate Commissioner under Order XXVI Rule 9 of CPC for measuring the property on the basis of the title documents possessed by the petitioner/plaintiff and the defendants with the help of a qualified surveyor and file a report before the trial Court. The said application was dismissed.

3.The learned counsel for the petitioner submits that the first defendant encroached the property of the petitioner and hence, the petitioner filed a suit for declaration and recovery of possession. Further, it was found that the



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respondent is claiming title over the subject property and the factual aspects can be identified only by appointing an Advocate Commissioner. Hence, the petitioner filed an application for appointment of an Advocate Commissioner to measure and note down the physical features of the property with a qualified surveyor based on the documents to be submitted by the plaintiff and the defendants. By appointing an Advocate Commissioner and a getting report from the Advocate Commissioner would not cause any prejudice to the defendants. He would further submits that this Court may grant liberty to the petitioner as well as the respondents to file objection before the trial Court, if the report of the Advocate Commissioner goes contrary to the interest of the petitioner or the respondents.

4. Whereas, the learned counsel for the first respondent submits that the petitioner/plaintiff even disputes the sale deed possessed by the first respondent/first defendant. When he disputed the said sale deed of the first defendant, allowing the Advocate Commissioner to measure the property on the basis of the said sale deed is not sustainable. The said issue can only be decided only before the trial court and not by way of commissioner's report.



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5. Heard the learned counsel appearing on either side and perused the materials placed on record.

6. The facts in the present case are not in dispute. The petitioner/plaintiff filed an application in I.A.No.331 of 2019 for appointment of an Advocate Commissioner to measure the subject property on the basis of the documents possessed by the plaintiff as well as the defendants with the help of a qualified surveyor. The said application was rejected.

7. It is well settled that the Advocate Commissioner's report is a piece of evidence only to help the Court to determine the issue between parties and it is not a conclusive proof either in favour of the plaintiff or the defendant. Even if the Advocate Commissioner's report goes against the petitioner or the respondents, they can very well file an objection before the trial Court at the time of trial. Therefore, the order passed by the Sub Court, Pattukottai in I.A.No.331 of 2019 dated 08.10.2021 is set aside and the trial Court is directed to appoint an Advocate as a Commissioner to inspect, measure and note down the physical features of the the subject property on the basis of the documents produced by the plaintiff as well as the defendants with the help of



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a qualified surveyor. The Advocate Commissioner is directed to measure the property and file a report along with necessary photographs before the trial Court. Considering the fact that the suit is of the year 2012, the trial Court is directed to dispose of the suit within a period of six [6] months from the date of receipt of a copy of this order.

8. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

26.06.2025

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

1. The Sub Court, Pattukottai.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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