



C.R.P.(MD)No.1580 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.[PD].(MD)No.1580 of 2022

and

C.M.P.(MD)No.6777 of 2022

1.Nesamma
2.Anitha
3.Ajitha Kumari
4.Bennet Murugesan
5.Yesudhas

... Petitioners

Vs.

Robert

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order and decretal order in I.A.No.1 of 2021 in O.S.No.498 of 2010 on the file of the II Additional District Munsif Court, Kuzhithurai, dated 21.04.2022.

For Petitioner : Mr.V.M.Balamohan Thambi

For Respondent : Steps due



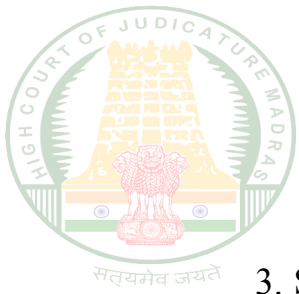
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ORDER

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This petition has been filed seeking to set aside the order, dated 21.04.2022 made in I.A.No.1 of 2021 in O.S.No.498 of 2010, II Additional District Munsif Court, Kuzhithurai.

2. The case of the petitioners is that they filed a suit in O.S.No.498 of 2010, on the file of the II Additional District Munsif, Kuzhithurai for declaration of title and possession and for permanent injunction against the respondent. In the said suit, the respondent filed I.A.No.202 of 2015 for appointment of Advocate Commissioner to note down the physical features of the suit property. The learned District Munsif allowed the said application by appointing the Advocate Commissioner. Against which, the petitioners filed C.R.P.No.2307 of 2015 before this Court. Pending civil revision petition, the Advocate Commissioner filed the Commissioner Report and plan. On 11.03.2019 this Court dismissed the Civil Revision Petition and granted liberty to the petitioners to approach the trial Court to file a re-issue of Advocate Commissioner petition. As per the order of this Court, the petitioners filed I.A.No.1 of 2021 for re-issue the Advocate Commissioner. The trial Court without considering the affidavit of the petitioners and order in C.R.P.No.2307 of 2015 dismissed the I.A.No.1 of 2021. Aggrieved against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.



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3. Sole respondent died. Steps due. Since no adverse order is going to be passed as against the respondent impleading the legal heirs need not be required at this stage and the petitioners are directed to take steps to implead the legal heirs of the respondent before the trial Court.

4. It is seen from the records that they filed a suit in O.S.No.498 of 2010, on the file of the II Additional District Munsif, Kuzhithurai for declaration of title and possession and for permanent injunction against the respondent. In the said suit, the respondent filed I.A.No.202 of 2015 for appointment of Advocate Commissioner to note down the physical features of the suit property. The learned District Munsif allowed the said application by appointing the Advocate Commissioner. Against which, the petitioners filed C.R.P.No.2307 of 2015 before this Court. Pending civil revision petition, the Advocate Commissioner filed the Commissioner Report and plan. On 11.03.2019 this Court dismissed the Civil Revision Petition and granted liberty to the petitioners to approach the trial Court to file a re-issue of Advocate Commissioner petition. As per the order of this Court, the petitioners filed I.A.No.1 of 2021 for re-issue the Advocate Commissioner. The trial Court has already closed the commission application after receiving the Commissioner Report and Plan. Whereas, the petitioner has not filed any objection to the Commissioner Report and Plan.



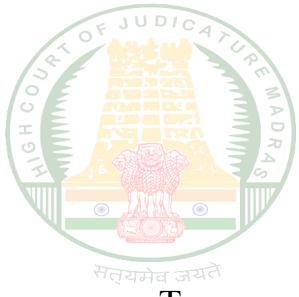
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The Commissioner had visited the suit property after due notice served to both sides. The report of the Advocate Commissioner itself is a piece of evidence to enable the Court to arrive at a definite conclusion and the same is not a conclusive proof either in favour of the petitioner or in favour of the respondent. If the petitioner has grievance over the report filed by the Advocate Commissioner, he can very well object the same by adducing proper evidence before the trial Court. Instead, the petitioner cannot seek re-issuance of Commissioner's warrant and the same is not permissible. The issue was rightly appreciated by the trial Court and the application of the petitioner was rightly rejected.

5. Accordingly, this Civil Revision Petition is dismissed with liberty to the petitioner to canvass all his defense before the trial Court against the report filed by the Advocate Commissioner by adducing proper evidence. No costs. Consequently, connected miscellaneous petition is closed.

21.07.2025

Internet: Yes/No
Index: Yes/No
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To
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- 1.The II Additional District Munsif Court,
Kuzhithurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

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