

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1514 of 2021

and

C.M.P.(MD).No.8312 of 2021

Maria Jaganathan

...Petitioner

Vs.

1.Murphy Thomas

2.Edward Athisayam

3.Divya Murphy Thomas

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records pertaining to the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No.118 of 2015 on the file of the learned Sub-Court, Ambasamudram, Tirunelveli, dated 11.08.2021 and to set aside the same.

For Petitioner : Mr.Niranjan S.Kumr

For Respondents : Mr.RM.Loganathan

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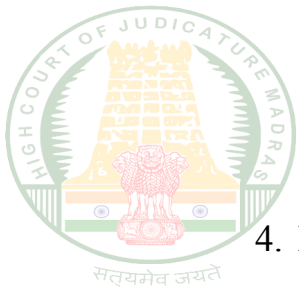


ORDER

This petition has been filed seeking orders to set aside the fair and decreetal order made in I.A.No.1 of 2019 in O.S.No.118 of 2015 on the file of the learned Sub-Court, Ambasamudram, Tirunelveli, dated 11.08.2021.

2. The petitioner is the first defendant in the suit in O.S.No 118 of 2015. The said suit was filed by the first respondent seeking declaration, permanent injunction and mandatory injunction. During the pendency of the suit before the trial Court, the petitioner filed an Interlocutory Application in I.A.No.1 of 2019 under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical features with the help of the Town Surveyor. The said petition was dismissed on 11.08.2021 on the ground that it was filed at a belated stage. Aggrieved by the said order, the present civil revision petition is filed.

3. The learned counsel appearing for the petitioner would submit that the appointment of an Advocate Commissioner to note down the physical features with the assistance of the Town Surveyor would facilitate proper adjudication of the issues between the parties, without causing any prejudice to the first respondent/plaintiff. In fact, the first respondent/plaintiff, during cross-examination, admitted that he has no objection to the appointment of an Advocate Commissioner.



4. Per contra, the learned counsel appearing for the respondents would submit that, in the event, the Advocate Commissioner's report is found to be contrary to the interest of the first respondent, this Court may grant liberty to the first respondent to file objections before the trial Court.

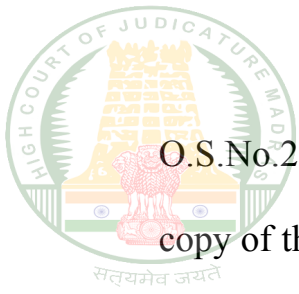
5. During the pendency of this Civil Revision Petition, the above said suit has been transferred to the file of the Principal Sub Court, Tenkasi and renumbered as O.S.No.225 of 2022.

5. In the result:

(a) the civil revision petition stands allowed and the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.118 of 2015 on the file of the learned Sub Judge, Ambasamudram, dated 11.08.2021 is set aside.

(b) the learned Principal Sub Judge, Tenkasi, is hereby directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of this order, to note down the physical features of the suit property, along with a qualified surveyor with further direction to the Commissioner to file a report within a period of one month from the date of appointment of Advocate Commissioner.

(c) after submitting the report by the Advocate Commissioner, the learned Principal Sub Judge, Tenkasi, is further directed to dispose of the suit in



O.S.No.225 of 2022 within a period of six months from the date of receipt of a copy of this order.

WEB COPY No costs. Consequently, the connected miscellaneous petition is closed.

12.06.2025

Internet:Yes/No

Index:Yes/No

TSG

To

1.The Sub Court, Ambasamudram, Tirunelveli.

2.The Sub Court, Tenkasi.

3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI, J.

TSG

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