



CRP(MD). No.1762 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 22/07/2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.1762 of 2022
and CMP(MD) No.7793 of 2022**

1. Vijayarenugadevi,,
2. G. Anandha Manikandan,,
3. G. Ramani Ganesh, ... Petitioners

Vs

1. Dhanalakshmi Ramaraj
2. Shanthi Gurunathan
3. E. Subramanian
4. Venkatachalam ... Respondents

PRAYER :-Civil Revision Petition filed under Article 227 of The Constitution of India to set aside the fair and decreetal order dated 06.06.2022 passed in I.A. No. 4 of 2020 in O.S. No. 192 of 2020 on the file of the Additional District Judge, (Fast Track Court), Tenkasi.

For Petitioner : Mr.K.Gokul

For Respondents : Mr.V.Meenakshi Sundaram for R1&R2

No appearance for R3&R4



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ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 06.06.2022 passed in I.A. No. 4 of 2020 in O.S. No. 192 of 2020 on the file of the Additional District Judge, (Fast Track Court), Tenkasi.

2. The petitioners are the defendants 3 to 5 and the respondents 1 and 2/plaintiffs filed a suit for partition in OS No.192/2020. Pending suit, the plaintiffs filed an application in IA No.4/2022 under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure to appoint an Advocate Commissioner to assess the nature of the suit property and the trees standing thereon and the nature and usufructs of the crops and their uses and the quantity of trees and to file a report for the same along with a sketch. The said petition came to be allowed. Challenging the same, the defendants are before this Court with this petition.



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3. The learned counsel for the petitioner would submit that the respondents 1 and 2 filed a partition suit, in which, in order to assess the nature of the trees standing in the suit property, the crops and the usufructs and nature of the crops and their uses. The said petition came to be allowed. The learned counsel would submit that after passing of preliminary decree alone, the appointment of Advocate Commissioner would be helpful in assessing the nature of the property for passing final decree. However, before framing of issues, the appointment of Advocate Commissioner is not sustainable. Accordingly, the learned counsel prays for setting aside the said order.

4. The learned counsel for the respondents 1 and 2 would however contend that unless the physical features are determined, there is no possibility of determining the issue between the parties with regard to mesne profits. He would submit that considering these aspects alone, the trial Court allowed the petition, which need not be interfered with.

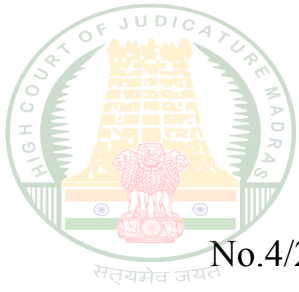
5. I have considered the rival submissions and perused the materials available on record.



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6. The suit is one for partition. The suit property contains immovable properties like crops and several type of trees. The application for appointment of Advocate Commissioner is allowed on the ground that for partition suit, it is necessary to ascertain the nature and usufructs of the crops and the quantity of trees standing thereon. After passing of preliminary decree alone, the appointment of Advocate Commissioner is useful for the final decree proceedings. However, at the time of pendency of the suit, praying for appointment of Advocate Commissioner is nothing but prolonging the issue. The trial Court has to decide the partition suit after contest and after passing preliminary decree alone, the Advocate Commissioner ought to have been appointed. The report is with regard to usufructs of the crops, nature of the crops and the quantity of trees and its uses cannot be ascertained by the Advocate Commissioner and if immovable properties like buildings are measured and marked, Advocate Commissioner can be appointed. However, in the present case of partition suit, the appointment of Advocate Commissioner would be decided after passing of preliminary decree. Accordingly, the Civil Revision Petition is allowed and the order of the trial Court in IA



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No.4/2020 in OS No.192/2020 is set aside. No costs. Consequently
connected Miscellaneous Petition is closed.

22.07.2025

NCC : Yes/No
Index : Yes/No

RR

TO

1.The Additional District Judge, (Fast Track Court), Tenkasi.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

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**ORDER
IN
CRP(MD) (NPD) No.1762 of 2022**

Date : 22/07/2025