



C.R.P.(MD)No.1937 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.07.2025

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CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P(MD)No.1937 of 2022

and

C.M.P(MD)No.8808 of 2022

1.A.Aleesmary
2.A.Arokiaraj
3.A.Anandaraj

... Petitioners

Vs.

Joser @ Sappan (Died)
1.Pushpavalli
2.Palaniyandi
3.S.Marikannu
4.S.Vignesh
5.S.Dinesh
6.S.Jeyashree
7.Kulandaivel
8.Sangilimuthu
9.Prabhakar
10.Deivakkanni
11.Kamalam
12.Kanitha

(Respondents 2 to 13 are brought on record as
LRs of the deceased sole respondent vide
Court order dated 29.07.2025)

... Respondents



C.R.P.(MD)No.1937 of 2022

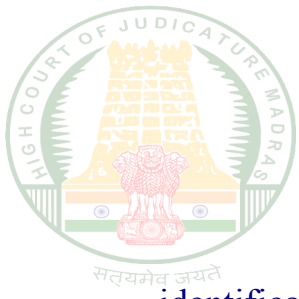
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 14.03.2022 made in I.A.No. 150 of 2020 in O.S.No.246 of 2020, on the file of the Additional Sub Court, Thanjavur and allow this Civil Revision Petition.

For Petitioner : Mr.G.Thaveethu
For Respondents : Mr.G.Kannan
1,7 to 9,11 & 12

ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order dated 14.03.2022 made in I.A.No.150 of 2020 in O.S.No.246 of 2020, on the file of the Additional Sub Court, Thanjavur.

2. The case of the petitioners is that the petitioners are the plaintiffs in O.S.No.246 of 2020 and they filed the said suit against the deceased respondent seeking declaration. Pending suit, the petitioners filed I.A.No.150 of 2020 under Order 26 Rule 9 for appointment of Advocate Commissioner and the said application was dismissed. Challenging the said dismissal order, the petitioners have filed the present Civil Revision Petition.



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3. The learned counsel for the petitioners submitted that the identification of the property and its nature can be decided only based on the report of the Advocate Commissioner. The learned Judge erred in holding that the petitioners have filed the application only to fill up the lacuna. The learned Judge misunderstood their legal proposition with regard to appointment of Advocate Commissioner and on erroneous ground dismissed the application filed by the petitioners and prayed for allowing the Civil Revision Petition.

4. The learned counsel for the respondent would submit that the present suit is filed for declaration, mandatory injunction and for recovery of possession in which, the petitioners/plaintiffs established the title before the trial Court and hence appointment of Advocate Commissioner is not necessary since the measurements are available in the document itself. Hence, there is no need for appointing Advocate Commissioner to measure the property. If there is any boundary dispute arose in the suit, then the Commissioner appointment is necessary to note down the physical features.

5. The petitioners is seeking the relief of declaration, mandatory injunction and for recovery of possession in the suit. It is for the petitioners to prove their case by documentary and oral evidence. The petitioners have stated that their father has already filed a suit in O.S.No.399 of 2012 and in that suit an



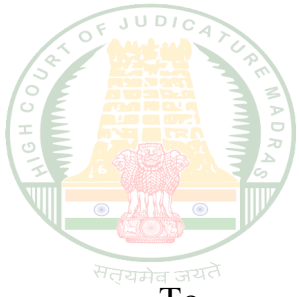
C.R.P.(MD)No.1937 of 2022

WEB COPY

application for appointment of advocate commissioner has been filed and the same was dismissed. filed a suit The respondent let in oral and documentary evidence to prove her case. The trial Court has dismissed the application on the ground that in the earlier suit an application seeking appointment of advocate commissioner was dismissed and hence, the petitioners cannot seek for the very same relief in the present case. In the suit, preliminary issues were raised and the case is posted for trial. At this stage, the petitioners filed petition for appointment of Advocate Commissioner. The learned Judge has considered all the materials on record and has correctly dismissed the application holding that the petitioners have not taken any steps to prosecute the case and they have repeatedly filed the petitions. The learned Judge exercised the power in proper perspective and there is no irregularity in the said order warranting interference by this Court. Accordingly, the Civil Revision Petition is dismissed with liberty to the petitioner to file an appropriate application before the trial Court to bring the legal heirs of the deceased sole respondent. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2025

Index : Yes/No
Internet : Yes / No
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C.R.P.(MD)No.1937 of 2022

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



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C.R.P.(MD)No.1937 of 2022

M.DHANDAPANI,J.

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C.R.P.(MD)No.1937 of 2022

29.07.2025