

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.859 of 2017

and

C.M.P.(MD).No.3789 of 2017

Renuga

...Petitioner

Vs.

Parvathi (Died)
1.Savithri (Died)

2.Vanaroja

3.Karthick

4.Vishali

5.Vishnu

...Respondents

(Respondent Nos.3 to 5 were brought on records as legal representatives of the deceased 1st respondent vide court order dated 04.03.2025 made in C.M.P. (MD).No.598 of 2022 in C.R.P.(MD).No.859 of 2017)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.347 of 2016 in O.S.No.181 of 2012 on the file of the learned Principal Sub Judge, Kumbakonam, dated 08.02.2017.



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C.R.P.(PD)(MD)No.859 of 2017



For Petitioner : Mr.V.K.Vijaya Ragavan

For R2 : Mr.V.Kannan

For R3, R4
& R5 : No Appearance

For R1 : Died

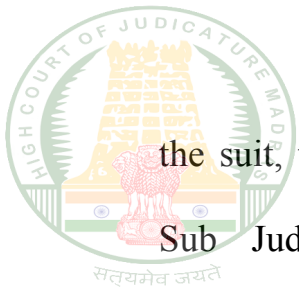
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ORDER

This petition has been filed seeking orders to set aside the fair and decreetal order passed in I.A.No.347 of 2016 in O.S.No.181 of 2012 on the file of the learned Principal Sub Judge, Kumbakonam, dated 08.02.2017.

2. The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit in O.S.No.181 of 2012.

3. The petitioner herein filed a suit in O.S. No.181 of 2012 before the learned Principal Sub Judge, Kumbakonam, seeking a declaration that the petitioner is the lawful owner of the suit property and is in legal possession, along with a consequential relief of permanent injunction restraining the respondents and their men from in any manner interfering with the petitioner's peaceful possession and enjoyment of the suit property. During the pendency of



the suit, the petitioner filed I.A. No.347 of 2016 before the learned Principal Sub Judge, Kumbakonam, seeking the appointment of an Advocate Commissioner to note down the physical features of the suit property. However, the said application was dismissed on 08.02.2016. Challenging the same, the present petition has been filed.

4. The learned counsel appearing for the petitioner would submit that the mere appointment of an Advocate Commissioner will not deprive the rights of the respondents. The respondents are entitled to file their objections to the report submitted by the Advocate Commissioner. The report of the Advocate Commissioner is based only on the physical features and evidence observed and is not conclusive proof for deciding the suit. It is merely a piece of evidence among others. Furthermore, the report will be filed only after affording an opportunity to the respondents to raise their objections. Hence, no prejudice would be caused to the respondents.

5. Heard the learned counsel appearing for the second respondent.

6. The petitioner filed a suit in O.S. No.181 of 2012 before the learned Subordinate Judge, Kumbakonam. During the pendency of the suit, the petitioner filed I.A. No.347 of 2017 seeking appointment of an Advocate Commissioner. However, the said application was dismissed. The mere



appointment of an Advocate Commissioner will not deprive the respondents of their right to canvass all relevant issues at the time of trial, and the report of the

Advocate Commissioner is only a piece of evidence before the trial Court to assist in arriving at a fair conclusion between the parties.

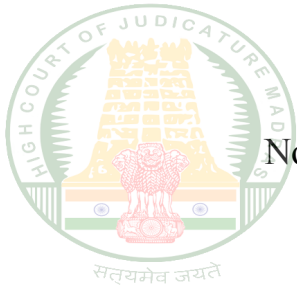
7. In the result:

(a) the civil revision petition stands allowed and the fair and decreetal order passed in I.A.No.347 of 2016 in O.S.No.181 of 2012 on the file of the learned Principal Sub Judge, Kumbakonam, dated 08.02.2017 is set aside.

(b) the learned Principal Sub Judge, Kumbakonam, is hereby directed to appoint an Advocate Commissioner by fixing the remuneration fees of Rs.25,000/- (Rupees Twenty Five Thousand only) within a period of two weeks from the date of report 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, Kumbakonam, is further directed to dispose of the suit in O.S.No.181 of 2012 within a period of six months.

If the petitioner fails to pay the fixed remuneration fees of Rs.25,000/-, the Interlocutory Application shall stand automatically dismissed.



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

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03.06.2025

Internet: Yes/No

Index: Yes/No

TSG

To

The Principal Sub Judge, Kumbakonam.

2. The Section Officer,

VR Section,

Madurai Bench of Madras High Court, Madurai.



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C.R.P.(PD)(MD)No.859 of 2017



M.DHANDAPANI, J.

TSG

C.R.P.(PD)(MD)No.859 of 2017

03.06.2025