



CRP(MD). No.407 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.02.2026

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THE HONOURABLE MRS. JUSTICE N.SENTHILKUMAR

CRP(MD).No.407 of 2023 and
CMP(MD).No.2000 of 2023

Jahir Hussain
rep. through his power agent
Jeyapaul

... Petitioner

Vs

1.Ramachandran
2.Ramadoss
3.Ramalakshmi
4.Azhagusekaran

... Respondents

PRAYER :- Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.03.2021 made in I.A.No.340 of 2019 in O.S.No.13 of 2017 on the file of the District Munsif Court, Ramanthapuram.

For Petitioner : Ms.R. Affrin Fathima
for M/s. Ajmal Associates

For respondents 1 to 4 : Mr. S. Muthukumar
Legal Aid Counsel

ORDER



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WEB COPY This Civil Revision Petition has been filed against the fair and decreetal order dated 12.03.2021 made in I.A. No. 340 of 2019 in O.S. No. 13 of 2017 on the file of the District Munsif Court, Ramanthapuram, dismissing the application for the appointment of an Advocate Commissioner.

2. The revision petitioner is the plaintiff, and the respondents are the defendants in the suit in O.S. No. 13 of 2017. The only point for consideration is with regard to the S.No. 47/9, which is held by the plaintiff, and S.No. 47/16, which is held by the defendants. The application was filed for the appointment of an Advocate Commissioner to survey the property and file his report with the assistance of a surveyor. However, the application was dismissed on the ground that S. Nos. 47/9 and 47/16 need to be independently proved by the revision petitioner, who is the plaintiff in the suit. The appointment of an Advocate Commissioner is only to aid the court with regard to the ground reality, and the report of the Advocate Commissioner with the aid of the survey will help the court in arriving at a conclusion.



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3. When the Advocate Commissioner visits the premises to prepare the report, advance notice will be served to the respondents/defendants, and the date will be fixed after informing the respective parties. The respondents/defendants will have the opportunity to raise objections when the Advocate Commissioner visits the premises, and such objections will be reflected in the Advocate Commissioner's report. The report is only an aid to the court in arriving at a conclusion and it will not be conclusive proof to establish the case of either party.

4. The learned counsel for the petitioner relied upon the judgment of the High Court of Madhya Pradesh, Indore Bench, reported in ***MP(MD) No. 2406 of 2019 in the case of Smt. Teena Pandey and another vs. Dr. Kirnesh Pandey***. The relevant paragraphs 9 & 10 are extracted hereunder:

“9. The scope of Order 26 Rule 9 of the CPC is very limited. The Trial Court, in any suit where a local investigation is required or proper for the purpose of elucidating any matter of dispute, may appoint a Commissioner. It is settled law that the parties are required to prove their own case by way of evidence; therefore, it is



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the duty of the plaintiff/defendant to first give evidence in support of their case. After the evidence of the parties, if the Court deems it proper that any issue requires clarification, then the Court may appoint a Commissioner. The report of the Commissioner is merely a piece of evidence and is not binding on the Trial Court. It can be used for the purpose of appreciating the evidence that came on record.

10. The Hon'ble Supreme Court has also considered the scope of Order XXVI Rule 9 and held that the provision of Order XXVI Rule 9 is to be invoked if the controversy is regarding the demarcation of the land between the parties.”

5. She also relied on the judgment of this Court made in CRP(PD) No. 420 of 2016 in the case of *Muthulakshmi and others vs. Selvaraj and others*. Paragraph 5 of the judgment is extracted hereunder:

“5. The challenge made to the order passed by the learned trial Judge cannot succeed because the revision petitioners are not going to be affected in any manner by the inspection of the property by the Advocate Commissioner to note the physical features. The report of the Commissioner and the plan will help the Court to localize the point in issue and understand the evidence to be adduced on both sides. The report of the Commissioner cannot be taken as proof of the plaintiff's case. On the other hand, the parties have to lead evidence in support of their claims, including the question regarding the existence or otherwise of the common passage and also regarding the alleged right of the first respondent/plaintiff to use the common passage unhindered by the acts of the revision petitioners. When such evidence is adduced, the Commissioner's report will provide a guiding



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light to understand the evidence in a proper manner and come to a correct conclusion. Moreover, during the course of the hearing of the Civil Revision Petition, it was brought to the notice of the Court that the Commissioner had already visited the suit properties and submitted a report and plan. The revision petitioners and the first respondent shall have a right to file objections to the Commissioner's report if they find any discrepancies in the report. Hence, the challenge made to the impugned order cannot succeed.”

6. All these judgments emphasize the value of the Advocate Commissioner's report, which will only aid the court in determining the facts and arriving at a conclusion. Therefore, the order passed by the trial court made in I.A.No.340 of 2019 in O.S.No.13 of 2017 on the file of the District Munsif Court, Ramanthapuram is hereby set aside, and the trial court shall appoint an Advocate Commissioner and complete the exercise within four months from the date of receipt of a copy of this order. Since the suit is of the year 2017, the trial court shall endeavour to conclude the same within one year or as expeditiously as possible.

7. This Civil Revision Petition is allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petition is closed.



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8. Since the notice was issued to the respondents 1 to 4 and their names have also been printed in the cause list, there was no appearance. This Court appointed Mr. S. Muthukumar as legal aid counsel. This Court places its appreciation for his assistance, and the Legal Services Authority shall pay a sum of Rs. 10,000/- to the legal aid counsel within a period of two weeks from the date of receipt of a copy of this order.

18.02.2026

TRP

Index : yes / no

Internet: yes/ no

TO

The District Munsif Court, Ramanthapuram.

N.SENTHILKUMAR, J.,



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