



C.R.P.(MD)No.591 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 04.03.2026

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.591 of 2026

and

C.M.P.(MD)No.2750 of 2026

James Arockiasamy

... Petitioner

vs.

1.Arulanthu

2.Suseela

3.Pannerselvam

4.Leema Rose

5.Fathimamery

6.The District Collector,
District Collector Office,
Pudukkottai.

7.The District Revenue Officer,
District Collector Office,
Pudukkottai.



C.R.P.(MD)No.591 of 2026

8.The Revenue Divisional Officer,
Divisional Office, Illuppur,
Pudukkottai District.

9.The Tahsildar,
Tahsildar Office, Kulathur,
Keeranur, Pudukkottai District.

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order, dated 02.01.2026 passed in I.A.No.4 of 2025 in O.S.No.43 of 2024 on the file of the District Munsif Court, Keeranur.

For Petitioner : Ms.Suriya
for M/s.KBS Law Office

For R6 to R9 : Mrs.D.Farjana Ghoushia

ORDER

This Civil Revision Petition challenges the order passed by the learned District Munsif Court, Keeranur, in I.A.No.4 of 2025 in O.S.No. 43 of 2024, dated 02.01.2026.

2. The first defendant is the revision petitioner.



C.R.P.(MD)No.591 of 2026

WEB COPY

3. For the sake of convenience, the parties shall be referred to as their rank in the suit.

4. O.S.No.43 of 2024 was presented by plaintiffs seeking relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the 'A' schedule mentioned property and for permanent injunction restraining the defendants from interfering with the manual pathway depicted as 'B' schedule property. Summons were served on the defendants.

5. The first defendant filed a written statement, which was adopted by the second defendant. According to defendants 1 and 2, there does not exist a pathway at all. The property is a patta land of the family of the first defendant for generations.

6. As dispute arose whether there exists a pathway or not, the plaintiffs filed I.A.No.4 of 2025 seeking appointment of an Advocate Commissioner to note down the physical features of the suit schedule



C.R.P.(MD)No.591 of 2026

mentioned property and to submit a report.

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7. The learned Trial Judge called upon the defendants to go on record by way of a counter affidavit. The interlocutory application was contested only by the private parties. The State respondents did not file a counter to the said application. The plaintiffs marked Ex.P.1 to Ex.P.13. On the side of the defendants, there was no contra evidence.

8. The learned Judge, on consideration of the affidavit, documents and counter, came to a conclusion that whether there exists a pathway or not on the field can be ascertained by the Court only by way of appointment of an Advocate Commissioner. Consequently, the learned Judge allowed the application and appointed an Advocate Commissioner. Aggrieved by the same, the present revision petition has been filed.

9. Ms.Suriya urges that, if an Advocate Commissioner is appointed, it would amount to collection of evidence in the suit. Therefore, on that short ground, the impugned order cannot be sustained. She further urges that where there is a dispute on title or possession, an



C.R.P.(MD)No.591 of 2026

Advocate Commissioner cannot be appointed. She states that the Court below should have seen that the petitioner's family has been in long possession of the respondents and in fact, has been benefited with a patta by the Revenue Department. As the land is a private patta land, she says, the appointment of an Advocate Commissioner as done by the Court below deserves to be set aside.

10. I have carefully considered the submission of Ms.Suriya and have gone through the records.

11. The dispute in the suit relates to the existence of a pathway in the 'B' schedule mentioned property. By virtue of the prayer sought in this suit, the issue that the Court necessarily has to address, at the time of final disposal, is the existence of the pathway over the suit schedule mentioned property. Order 26 Rule 10 enables the Court to appoint an Advocate Commissioner to elucidate any matter in issue. As rightly concluded by the learned Judge in paragraph number 5.3 of the impugned order, whether there exists a pathway or not on the field, necessarily requires a report of the Commissioner. In cases, where



C.R.P.(MD)No.591 of 2026

disputes of such nature like existence of pathway, encroachments, boundary dispute etc, the Supreme Court has held that appointment of an Advocate Commissioner would be appropriate (see ***Haryana Waqf Board Vs. Shanti Sarup (2008) 8 SCC 671***).

12. Insofar as the plea of Ms.Suriya that an Advocate Commissioner's report, if received, might be treated as an evidence, this submission overlooks the law that under Order 26 Rule 10(2) of the Code of Civil Procedure, the report and the plan of an Advocate Commissioner are treated as evidence. A general observation made in other proceedings cannot be pressed into service when the dispute itself relates to the existence of the pathway.

13. If the first defendant feels that the land is a patta land, it is for him to file appropriate documents during the course of trial to substantiate the plea. It cannot be a ground to set aside an order which has been passed by the learned Judge after having analysed the pleadings and the documents before him.



C.R.P.(MD)No.591 of 2026

WEB COPY

14. I should add here that an appointment of Advocate Commissioner was never considered as “case decided” within the scope of Section 115 of the Code of Civil Procedure. It was merely treated as a procedural order. (See, *N.Kanna Reddy V. B.Suguna*, 1981 (2) KAR LJ 238). Unless and until the appointment of Advocate Commissioner was so egregiously wrong, like appointing an Advocate Commissioner in a money suit, seldom this Court would interfere with the appointment of Commissioners by the Trial Court.

15. For the fact that revision under Section 115 of CPC would not be maintainable, pursuant to the amendment made by the Code of Civil Procedure Amendment Act, 2002, does not expand the scope of revision when presented under Article 227 of the Constitution of India so much as to challenge such order as impugned presently.

16. On both these grounds, on merits as well as on the aspect of interference by this Court with the discretionary order exercised by the learned Trial Judge, I do not find any merits in the revision. The same is



C.R.P.(MD)No.591 of 2026

dismissed. No costs. Consequently, the connected Miscellaneous Petition
is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No

04.03.2026

Indu

To:

The District Munsif Court, Keeranur.



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C.R.P.(MD)No.591 of 2026

V.LAKSHMINARAYANAN, J.

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Order made in
C.R.P(MD)No.591 of 2026

04.03.2026