



CRP(MD). No.729 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18/03/2026

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

CRP(MD). No.729 of 2026
and CMP(MD)No.3383 of 2026

P.Raja

... Petitioner/Petitioner/Defendant No.13

Vs.

1. P.Karunanidhi

2. P.Muthupandi

3. P.Murugan

4. T.Rajendran

5. T.Pandiselvam

...Respondents 1 to 5/Respondents 1 to 5/
Plaintiffs

6. E.M.G.S.Indirani

7. E.M.G.S.Periyapothirajan

8. E.M.G.S.Chinnapothirajan

9. E.M.G.S.Arunpothirajan



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10. E.M.G.S.Rajeswari
11. E.M.G.S. Gopala Krishnapandiyan
12. E.M.G.S.Radhakrishnanpandiyan
13. E.M.G.S. Muthu Meenakshi
14. Arulappan
15. Subramanian
16. S.Sethupathiraja
17. Kalishwaran ... Respondents 6 to 17/Respondents 6 to 17/
Defendants 1 to 12

PRAYER :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in IA No. 12/2026 in O.S No.254/2009, on the file of the District Munsif Court, Melur dated 12.02.2026.

For Petitioner : Mr.M.Ponniah
For R1 : Mr.T.K.Gopalan
For R16 : Mr.S.Ramesh

ORDER

This Civil Revision Petition challenges the order passed by the learned District Munsif, Melur, in I.A.No. 12 of 2026 in O.S.No.254 of 2009 dated 12.02.2026.



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2. O.S.No. 254 of 2009 is a suit for declaration and consequential relief of injunction with respect to the suit schedule mentioned property. The defendants were served with summons. They have filed their written statement. Evidence has been completed. It is stated that the plaintiffs also made submissions in the suit. At that stage, the 13th defendant, who was impleaded pending the suit in I.A.No.1172 of 2017 dated 23.08.2017 took out an application in I.A.No.12 of 2026, for issuance of summons to the Advocate Commissioner. The said application came to be dismissed on 12.02.2026. Hence, the revision.

3. I heard Mr.Ponniah, for the civil revision petitioner and Mr.T.K.Gopalan, for the first respondent/contesting plaintiff and Mr.S.Ramesh, for the respondent No.16/the 11th defendant.

4.It is the plea of Mr.Ponnaiah, that the report of Advocate Commissioner and the Surveyor sketch have not noted the properties in a proper manner. According to him, the Commissioner's report does not give the precise survey numbers and the corresponding re-survey numbers as they exist today. He further asserts that the Surveyor's sketch



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is only a reflection of the plaint plan. It was in those circumstances that he had filed an application for re-issuance of summons to the Advocate Commissioner. He states that the learned Trial Judge had erroneously dismissed the petition on the grounds of delay.

5. *Per Contra*, Mr.T.K.Gopalan, urges that the first plaintiff admittedly has purchased the property situated in Survey No.17/1A1A, whereas the suit relates to Survey Nos. 16/3C1B, 17/10, 17/12, 16/3C2 and 17/13. He attacks the purchase made by the civil revision petitioner itself, as one from a person not authorised, in terms of the orders passed in Trust O.P.No. 117 of 1981. He states that there is absolutely no error in the order passed by the Trial Court in dismissing the petition on grounds of delay. He further states that neither the plaintiffs nor the defendants, including the civil revision petitioner had filed any objections to the Advocate Commissioner's report. Consequently, he pleads that the revision may be dismissed.

6. I have heard both sides. I have carefully considered the submissions made on either side and I have gone through the records.



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7. For the purpose of disposal of this revision, I need not delve deep into the matter whether the 13th defendant has the title to the property or whether it is the exclusive property of the plaintiffs. It is a matter which would necessarily have to be gone into by the Trial Court at the time of final disposal.

8. The scope of this revision is limited to whether an application for re-issue of summons has to be considered.

9. The Advocate Commissioner, who had visited the suit property, had submitted a report and a plan. This report and plan had been submitted much before the civil revision petitioner had been impleaded as a party to the suit on 23.08.2017. Hence, there would have not been any opportunity for the petitioner/13th defendant to file any objections to the report. Yet from 2017 till 2026 and before the application was filed, ample opportunity was available to the 13th defendant to file his objections to the Advocate Commissioner's report.



10. An application for re-issue is not for the asking. It is the duty of a party, who objects to an Advocate Commissioner's report to file his/her objections and call upon the court to record his objections and thereafter, the court can decide whether the report must be accepted or not. This is an essential step before seeking for re-issuance. This step has been held to be essential because the court proceeds with the merits of the case only after deciding whether to accept the Advocate Commissioner's report or not. In case, the court concludes that the Advocate Commissioner's report requires some re-verification or modification and the court is not satisfied with the first report, the court is duty bound to re-issue the warrant by setting aside the first report and to appointing a fresh commissioner.

11. This position has been settled by this Court in **Vemba Gounder vs. Pooncholai Gounder** in **AIR 1996 MAD 347**. The relevant portion of the said judgment is extracted herein under:

"33. In the result, I dismiss the Revision with costs. I direct the Registry to communicate a copy of this Order to the Court below forthwith, with a direction to follow the procedure mentioned above not only in this case but also in all the cases where Commissioner's Report is obtained under



Order 26, Rule 10, C.P.C. I think it will be proper on the part of the trial Court to post the case for filing Objections whenever a Commissioner's Report is filed, and thereafter take evidence on the Objections without the party asking for the same. If the -parties are not availing that opportunity, the case could be posted in the list for disposal, on merits. It is made clear that the dismissal of this Revision Petition will not bar the plaintiff/petitioner from taking appropriate steps for getting the Commissioner's Report set aside or for getting the Commission remitted to the same Commissioner, of course, subject to the satisfaction of the trial Court regarding the same, by following the procedure under Order 21, Rule 10, C.P.C".

12. Admittedly, none of the above-mentioned steps have been gone through by the 13th defendant. At the fag end of the case, that too, when the litigation has been pending for at least 17 years, he has taken out this application. The reason given by the learned District Munsif, Melur, that having waited from 2017 till 2026 thereafter filing a petition seeking re-issue, is entirely misconceived and finds acceptance at the hands of this Court.



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13. A litigant must be vigilant to move an application soon after he or she fears that the record on the file of the court affects his or her rights. A party cannot wake up from slumber and move an application at his or her convenience. Hence, I am of the view that the order passed by the learned District Munsif, Melur in I.A.No.12 of 2026 in O.S.No.254 of 2009, on the file of the District Munsif Court, Melur dated 12.02.2026, does not require any interference.

14. Having said this, I should point out that in terms of Order 26 Rule 10(2) C.P.C, any party to a suit is entitled to examine an Advocate Commissioner personally in court on any of the matters referred to by him or mentioned in the report, or as to the report itself. This is a precious right available to a litigant. I called upon the learned counsel for both sides to verify if the Advocate Commissioner, who had submitted the report, is still practicing in Melur. Both the learned counsels reported in the affirmative.

15. While confirming the order of the District Munsif Court, Melur, this Court issues the following directions:



(i) The 13th defendant alone will be entitled to cross examine the Advocate Commissioner, who submitted the report. This benefit is given to the 13th defendant on account of the fact that he was not a party to the suit, when the Advocate Commissioner's report was submitted in the year 2010. Apart from the 13th defendant, no other person will be entitled to cross-examine the Advocate Commissioner;

(ii) Since the 13th defendant took his own sweet time to approach the court, the luxury of cross-examination cannot be granted for the asking. The petitioner will pay a sum of Rs.10,000/-(Rupees Ten Thousand Only) to the Advocate Commissioner on or before 27.03.2026;

(iii) On 06.04.2026, the court shall confirm the payment of Rs.10,000/- to the Advocate Commissioner and shall permit the 13th defendant to cross-examine him only on his report. The cross-examination will not exceed the scope of Order 26, Rule 10(2) of C.P.C. No adjournment will be granted to the 13th defendant. He has to cross-examine the Advocate Commissioner on 06/04/2026 itself.

(iv) Mr.T.K. Gopalan, learned counsel for the first respondent reports that he will make a submissions in the suit by 10.04.2026.



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(v) The learned District Munsif, Melur, shall ensure that the defendants complete their submissions in the suit by 17.04.2026.

(vi) The learned District Munsif, Melur, shall enter upon judgment in the suit by 12.06.2026.

(vii) He shall also submit a report of compliance to this Court by 16.06.2026. The direction to the learned District Munsif, Melur, is being issued, as the parties have been litigating before the court for nearly two decades, that being a sufficient time for them to see the end of this litigation.

16. With the above observations and directions, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2026

Index : Yes/No
Internet: Yes/No
CM



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To,

1.The District Munsif Court,
Melur.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court.



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V. LAKSHMINARAYANAN, J

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