

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF, TITTAGUDI

Present: Selvi.N.Shalini, B.Com.LL.B.(Hons.)

Additional District Munsif, Tittagudi

On Tuesday, the 28th day of April 2026

IA.No.4/2022 in O.S.No.52/2019

1. Muthukaruppan,
 2. Sundararaj,
 3. Ramalingam,
 4. Periyasamy,
 5. Chinnasamy,
 6. Periyasamy representing the devotees of
Moopanar Kovil, Poyanapadi Village Colony ... Petitioners/ Plaintiffs
- /Vs/
1. Perumal (Died), Rep by Defendants 6 to 8
 2. Sivabakiyam,
 3. Kala,
 4. The Tahsildar, Tittagudi
 5. The District Collector, Cuddalore ... Respondents / Defendants
 6. Selvamani,
 7. Venkatraj,
 8. Praveen ... Respondents / Proposed Defendants 6 to 8

This petition was filed on 19.09.2022 and coming before me for final disposal on 28.04.2026 in the presence of Ms.Savithiri, Counsel for Petitioners; R1 died; Mr.Kan.Radhakrishnan, Counsel for R2, R3, R6 & R7; Learned Govt. Pleader for R4 & R5; Petition dismissed against R8. Upon hearing the arguments of both sides and upon perusing the materials on record, this court doth hereby pronounce the following;

ORDER

1. This petition in I.A.No.4/2022 in O.S.No.52/2019 has been filed under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to note down the

physical features, number of Idols and the structures in the petition property and file a report along with plan.

2. Heard both sides. Petition and counter perused.

3. It is a well settled position of law that an Advocate Commissioner cannot be appointed in a suit for bare injunction. Only when there is a dispute with regard to the identity of the property or in the boundaries of the property, a Commissioner can be appointed. The Advocate Commissioner cannot be appointed to prove possession or collect evidence and it is the bounden duty of the parties to establish their case through oral and documentary evidence.

4. The Hon'ble High Court, Madras in Selvan vs. Alagappan Udayar (CRP. (PD).No.2065/2015 dated 13.07.2015) observed that *"It is the duty of the respondent/plaintiff to prove his case by letting oral and documentary evidence. But that factum was not considered by the trial Court. Hence, I am of the view, the trial Court has erroneously allowed the application for appointment of Advocate Commissioner to collect evidence."*

5. The Advocate Commissioner cannot be appointed for making an enquiry about the number of years the temple has been situated in the suit property. Since the same has to be adjudicated upon framing issues and on appreciation of evidence.

6. In the instance case, the petitioner has sought for appointment of Advocate Commissioner for the purpose of counting how many Idols are there in the suit property, the physical features and to determine how many years the temple has been located in the suit property. The Advocate Commissioner is not an archaeologist. He

can only count the number of Idols in the temple but he cannot state for how long they have been there in the suit property. In such circumstances, appointing a Commissioner will lead to collection of evidence.

7. In light of the above decision and discussion this court is not inclined to allow this petition to appoint an Advocate Commissioner.

In the result this petition is dismissed. No cost.

Directly typed by me in my laptop, formatted by Typist, corrected and pronounced by me in the open court, on this the 28th day of April 2026.

Additional District Munsif,
Tittagudi.

ORAL AND DOCUMENTARY EVIDENCE ON THE SIDE OF THE PETITIONERS

AND RESPONDENTS: NIL

Additional District Munsif,
Tittagudi.

Fair Order
IA.4/2022 in
O.S.No.52/2019
Date: 28.04.2026