

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED: 06.08.2025**

**CORAM**

**THE HON'BLE MR. JUSTICE M.DHANDAPANI**

**C.R.P.(MD)No.2236 of 2022**  
**and C.M.P.(MD).No.10455 of 2022**

1.Agnikumar

2.Maheshwari

...Petitioners

Vs.

1.Thalavai

2.Utchi Mahali

...Respondents

Ramaiya (died)

Muthammal (died)

3.Lakshmi

4.Sethu Ammal

5.Vembu

6.Sudalai Muthu

7.Esakkiammal

8.Ramukutty

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 28.09.2022 passed in



I.A.No.15 of 2022 in O.S.No.37 of 2014 on the file of the Principal District Munsif Court, Ambasamudram and allow the Civil Revision Petition.

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For Petitioners : Mr.A.Sankararamasubramanian

For R-1, R-2  
R-4 and R-8 : Mr.N.Vignesh

### **ORDER**

This petition has been filed to set aside the fair and decreetal order dated 28.09.2022 passed in I.A.No.15 of 2022 in O.S.No.37 of 2014 on the file of the Principal District Munsif Court, Ambasamudram.

2. The petitioners are the defendants in O.S.No.37 of 2014. The said suit was filed by the respondent Nos.1 and 2 seeking declaration and recovery of possession. Pending the suit, the respondents filed an interlocutory application in I.A.No.15 of 2022 seeking appointment of an Advocate Commissioner which was allowed in their favour on 28.09.2022. Aggrieved by the said order, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioners would submit that the suit was originally filed for the relief of declaration and permanent injunction, but later amended to include the reliefs of declaration and recovery of possession. When the suit is for declaration and recovery of possession based on a sale deed and title documents, there is no necessity to appoint an



Advocate Commissioner for deciding title. However, in the present case, the trial Court appointed an Advocate Commissioner, which according to the petitioners, is unsustainable. He would further submit that earlier, the respondent Nos.1 and 2 had filed I.A.No.174 of 2014 for appointment of an Advocate Commissioner, which was dismissed for default on 04.01.2014. Thereafter, the respondents along with another person, viz., Ramaiya, filed I.A.No.407 of 2015, which was allowed by the trial Court. Aggrieved by the said order, the petitioners filed C.R.P.(MD) No.2374 of 2015 before this Court, and by order dated 10.04.2018, this Court allowed the civil revision petition. Subsequently, the respondents filed I.A.No.2 of 2019 again seeking appointment of an Advocate Commissioner, which was dismissed on 23.04.2019. The learned counsel would therefore submit that the respondents have been repeatedly filing interlocutory applications for the same relief, only to drag on the proceedings. Hence, he prays for allowing this petition.

4. Per contra, the learned counsel appearing for the respondent Nos.1, 2, 4 and 8 would submit that initially the suit was filed for declaration and permanent injunction, but later the reliefs were amended to include declaration, and recovery of possession. According to them, the petitioners have encroached upon a portion of the suit property, and in order to identify the encroached portion, the appointment of an Advocate Commissioner is necessary. No prejudice would be caused to the petitioners by such appointment. He relies



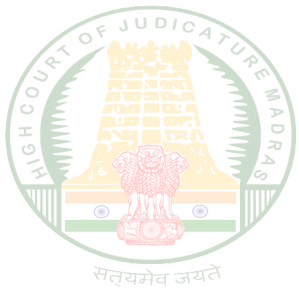
upon the decision of this Court reported in **2019 (2) MWN (Civil) 514 (K.V.**

**Perumal vs. N. Gokulavasan)**, wherein it was held that appointment of an

Advocate Commissioner to identify the suit property with the help of a qualified Surveyor is permissible in order to properly adjudicate the dispute.

The relevant portions in the said judgment are extracted hereunder:

*“9. Considering the facts and circumstances of the present case, I am of the view that the reasons stated by the Court below cannot be accepted, as there is no dispute with regard to the identification of the property, it does not mean that the petitioners/plaintiffs cannot seek for appointment of Advocate Commissioner under Order 26 Rule 9 and Section 151 of CPC. The measurement and identification of property is useful to the Court to arrive at a proper conclusion in respect of the property and the Advocate Commissioner will not measure the property on its own, but with the help of Village Administrative Officer and Surveyor, on basis of revenue records. Hence, if the Advocate Commissioner visited the property and note down the physical features and measured the property with the help of Surveyor on the basis of the rival documents produced by the parties, it would not cause any prejudice to the respondents/defendants and it would be necessary and it is only a guiding factor to the trial Court to arrive at a conclusion about the property. In this regard, it is useful to extract below the observation of this Court in the case of Saraswathy and another Vs. Viswanathan reported in 2002 (4) LW 142.*



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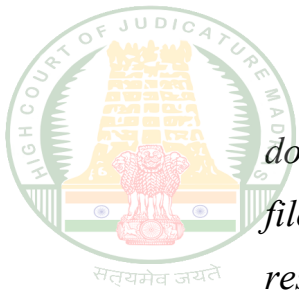


*“9. Generally speaking, in a suit filed by the plaintiff, he is a dominus litus and further, this is not an universal rule, in the considered opinion of this Court.*

*10. At best, an Advocate Commissioner's report can be taken note of by the first appellate Court along with the other oral and documentary evidence on record. Even if an Advocate Commissioner is appointed, the report filed by the Advocate Commissioner is not binding on a Court of law and a Court is entitled to act independently basing its conclusions on the strength of the documentary and oral evidence on record. It is also an axiomatic fact that a possession has to be proved by a litigating party and not by a Commissioner through his appointment made by a Court of law.”*

*10. Here also, even though the Advocate Commissioner is appointed, the Court is entitled to act independently based on the documents produced and oral evidence adduced by the parties. Hence, appointment of Advocate Commissioner will not cause any prejudice to the respondents/defendants.*

*11. In view of the aforesaid facts and circumstances, I am inclined to issue a direction to the trial Court to appoint an Advocate Commissioner and pass appropriate orders. The Advocate Commissioner shall measure the properties mentioned in the suit schedule with the help of a qualified surveyor and note*



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*down the physical features in and around the suit properties and file a report and plan. The parties shall file a copy of the respective title deeds and also plans to enable the Advocate Commissioner and Town Surveyor to inspect the suit property and file a report.*

*12. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed. “*

5. Considering the rival submissions and the fact that the appointment of an Advocate Commissioner in the present case is for the limited purpose of identifying the property and noting down the physical features, no interference is warranted with the order of the trial Court. However, the petitioners are directed to produce the title deed before the Advocate Commissioner to enable then to measure the property with the assistance of a qualified Surveyor and to note down the physical features, and thereafter the Advocate Commissioner will file his report before the trial Court.

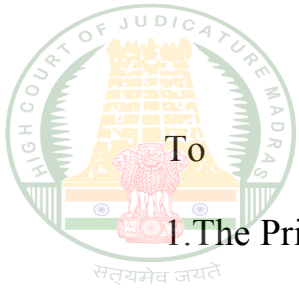
6. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**06.08.2025**

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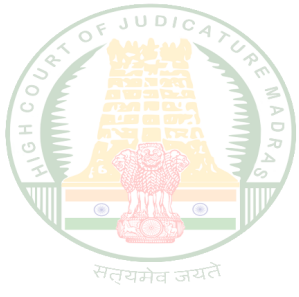
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To

1. The Principal District Munsif Court, Ambasamudram.

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



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M.DHANDAPANI, J.

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