





that actually, the compound wall in T.S.No.269/2 is for the usage of the petitioners/plaintiffs and the Surveyor's plan is wrong with regard to encroachment stated therein.

3. The revision petitioners state that since the Advocate Commissioner proceeded to inspect the property based on the Surveyor's plan, it becomes necessary to direct the Commissioner to revisit the property once again and file an additional report along with rough plan. Contending that the Commissioner has not measured the property properly and if the suit is proceeded on the basis of the said report, much prejudice would be caused to them, they filed an application for re-issuance of warrant to the Advocate Commissioner for revisiting the property, which was rejected by the Trial Court.

4. The learned counsel for the petitioners relied upon the following decisions of this Court to substantiate his argument that re-issuance of warrant to the very same Advocate Commissioner for the purpose of filing better report is permissible under law:

i) **V.Ganesan vs. Kamal Jain** reported in **2013 (2) MWN (Civil) 619;**

"7. A perusal of the pleading of both the parties will make it clear that there is an issue as to whether the pathway really forms part of the suit property. Of course the Commissioner in his earlier report has submitted that there is a pathway. That is very seriously objected to by the petitioner/plaintiff. But, the Commissioner did not have the benefit of measuring the suit property and give a specific finding as to whether the so called pathway forms part of the suit property or not. Apart from that, at the time the Commissioner visited the property, the petitioner was not present to identify the suit property. In such circumstances, in my considered opinion, it will be appropriate to request the very same Commissioner to measure the suit property with the help of surveyor and to file a Supplemental report.

8. Of course it is true that in the normal course without scrapping the earlier report for defects, it is not possible to appoint a Commissioner for the same purpose. But here, the earlier Commissioner's report need not be scrapped because by re-issuing the warrant the Commissioner is directed only to submit an Additional report. Thus both reports will be on the file of the Court. Above all a perusal of the impugned order of the Lower Court had dismissed the Interlocutory Application on the ground that the present application was filed when the Interlocutory



Application for Temporary Injunction was under consideration and also because the earlier Commissioner Report was available".

ii) **A.Palaniappan vs. K.Nallasamy,** reported in **2008 (3) CTC 602;**

"7. It is true that at an earlier point of time, an Advocate Commissioner was appointed by the Trial Court at the instance of the respondents. In pursuance of the warrant issued to the Advocate Commissioner he had inspected the property and submitted the report. After a period of about two years the petitioner had come with the present application to remit the report to the Advocate Commissioner and to file a fresh report in the light of the objections filed by the petitioner to the earlier commissioner's report. The learned Trial Judge observed that the details which are sought to be collected by way of remitting the report the Advocate Commissioner could be elicited by examining the Advocate Commissioner and such being the case, the Application to remit the warrant tot he Advocate Commissioner with a prayer to file afresh report is clearly unwarranted in the facts and circumstances of the case. However , the fact remains that the petitioner has preferred objection to the report of the Advocate Commissioner and it was his case before the trial court that the plan drawn by the Advocate Commissioner was not in accordance with the actual measurement of the property and in fact the inspection was conducted in the absence of the petitioner. The prayer in the application is only to remit the warrant to the very same Advocate Commissioner for the purpose of filing a fresh report after measuring the property with the help of a surveyor, but of course, taking into consideration the objection filed by the present petitioner. All the procedures are man made and the ultimate goal is to do complete justice. The petitioner being the plaintiff in the suit, the burden is on him to prove the plaint averments and for the purpose of projecting his case , the petitioner has sought the report of an Advocate Commissioner by remitting the warrant to the very same Commissioner and as such I do not find any reason to deny the relief to the petitioner. Therefore, I am inclined to allow this Civil Revision Petition by setting aside the order dated 18.06.2007 in IA No.394 of 2007.

8. The Lower Court is directed to remit the warrant to the very same Advocate Commissioner to inspect the property once again by fixing an outer limit of three months from the date of remitting the warrant to submit the report".



5. Per contra, learned counsel for the respondent would contend that the plaintiffs have filed this vexatious petition only to drag on the proceedings and they are not interested in prosecuting the suit. It is further contended that the Advocate Commissioner has filed the report without any defect on the basis of the documents available on record. Therefore, there is no need to interfere with the order of the Trial Court and the petitioner is to be dismissed.

6. Heard the learned counsel on either side *in extenso* and perused the material documents available on record.

7. Admittedly, the plaintiffs had filed the suit for permanent injunction and a perusal of the pleadings of the plaintiffs would unfold that the issue in question revolves around the properties in related to T.S.Nos. 270 and 269/2. In order to bring out the cat out of the bag, an Advocate Commissioner was appointed by the Trial Court, who, in turn filed his report, which, according to the plaintiffs, was a biased one and was filed without considering their objections. In such circumstances, I am of the view that one more opportunity may be given to the plaintiffs to prove their case by requesting the very same Commissioner to measure the suit property with the help of Surveyor and to file a Supplementary report.

8. Of course, it is true that in the normal course without scraping the earlier report for defects, it is not possible to appoint another Commissioner for the same purpose. But here, the earlier Commissioner's report need not be scrapped because by re-issuing the warrant, the very same Commissioner is directed to submit an Additional report. Thus both reports will be on the file of the Court and by doing so, no prejudice would be caused to the respondent herein also.

9. Thus, following the judgments, referred to *supra* and on its due application to present case on hand, no other conclusion than the one that the order passed by the learned District Munsif, Palani in I.A.No.75 of 2016 in I.A.No.619 of 2013 in O.S.No.354 of 2012 is liable to be set aside, can be arrived at.

10. In the result,

a) this Civil Revision Petition is allowed by setting aside the order passed in I.A.No.75 of 2016 in I.A.No.619 of 2013 in O.S.No.354 of 2012 dated 05.07.2016 by the learned District Munsif, Palani;

(b) the learned District Munsif, Palani is directed to re-issue the warrant within a period of one week from the date of receipt of a copy of this order to the same Advocate Commissioner with a direction to measure the suit property with the help of Taluk Surveyor and submit a report within a period of three weeks from

the date of re-issuance of warrant;

(c) on filing the additional report by the Advocate Commissioner based on the re-issuance of warrant, learned counsel on either side are permitted to file their objections before the Trial Court within a period of two weeks thereafter;

(d) on filing the additional report as well as on receipt of objections of both parties within the time limit fixed by this Court, the learned District Munsif, Palani is directed to dispose the suit in O.S.No.354 of 2012 within a period of four months thereafter without giving any unnecessary adjournment to either parties and the respective parties are directed to cooperate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

**To**

1. The District Munsif, Palani.
2. The Record Keeper, VR SECTION,  
Madurai Bench of Madras High Court,  
Madurai. (2 COPIES)

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No.68161  
+ 1 CC TO Mr.T.LENIN KUMAR, ADVOCATE IN SR No.68140

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RJ/RSK/SAR-1 : 12/07/2018 : 5P/6C

**C.R.P. (PD) (MD) .No.704 of 2017 and  
C.M.P. (MD) .No.3178 of 2017  
13.06.2018**