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C.R.P.(NPD)Nos.790 and 300 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 01.08.2022**

**CORAM :**

**THE HONOURABLE MS. JUSTICE R.N.MANJULA**

**C.R.P.(NPD)Nos.790 and 300 of 2022  
and  
C.M.P.No.1428 of 2022**

**CRP(NPD)No.790 of 2022**

|            |       |                |
|------------|-------|----------------|
| Manikandan | ..Vs. | ... Petitioner |
| Boopathi   |       | ... Respondent |

Prayer :- Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decretal order dated 11.01.2022 in I.A.No.7 of 2021 in I.A.No.2 of 2020 in A.S.No.10 of 2020 on the file of the learned Principal District Judge at Nagapattinam and allow the Civil Revision Petition.

For Petitioner : Mr.G.Nagarajan

For Respondent : Mr.D.Vairamoorthy,  
for Mr.S.Senthil

**CRP(NPD)No.300 of 2022**

|            |       |                |
|------------|-------|----------------|
| Boopathi   | ..Vs. | ... Petitioner |
| Manikandan |       | ... Respondent |



C.R.P.(NPD)Nos.790 and 300 of 2022

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India to allow the above Civil Revision Petition by setting aside the fair and decretal order dated 11.01.2022 made in I.A.No.2 of 2020 in A.S.No.10 of 2020 on the file of the Principal District Judge, Nagappattinam.

For Petitioner : Mr.D.Vairamoorthy,  
for Mr.S.Senthil  
For Respondent: Mr.G.Nagarajan

### **COMMON ORDER**

These Civil Revision Petitions have been preferred challenging the order dated 11.01.2022 passed in I.A.Nos.2 of 2020 and 7 of 2021 in A.S.No.10 of 2020 by the learned Principal District Judge, Nagapattinam.

2.1 The revision petitioner in C.R.P(PD).No.790 of 2022 is the third defendant in the suit in O.S.No.115 of 2008 filed by the respondent herein/plaintiff.

2.2 The revision petitioner in another C.R.P.(PD).No.300 of 2022 is the plaintiff, who has filed the suit in O.S.No.115 of 2008 for the reliefs of declaration, permanent injunction and mandatory injunction and the



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said suit was decreed as prayed for. Aggrieved over the same, the third defendant has preferred an appeal. During the pendency of the appeal, the appellant/third defendant filed two applications seeking appointment of an Advocate Commissioner to inspect the suit property and measure the same with the help of the Surveyor. The learned District Judge, Nagapattinam has allowed the application in I.A.No.2 of 2020 seeking the relief for appointment of Commissioner, however, he does not choose to allow the application in I.A.No.7 of 2021 seeking for the help of the Surveyor to measure the suit property. Aggrieved over the said order, both the appellant/third defendant and the first respondent/plaintiff have preferred these revision petitions.

3. For the sake of convenience, the parties are denoted as 'plaintiff' and 'third defendant'.

4.The learned counsel for the petitioner/third defendant submitted that the appointment of Commissioner is essential for the purpose of deciding the issues arose in the case; and the assistance of the Taluk Surveyor is also very much essential; even though, the third defendant



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filed a petition for appointment of Commissioner before the trial Court that was not allowed; only in view of that the trial Court could not take proper decision; had the Commissioner was appointed in order to measure the field in S.No.554/7 and submit a detailed report with the sketch showing sub divisions and extent, the broader facts would have come to the light and that could have been of better help for the Court.

5.The learned counsel for the respondent/plaintiff submitted that in the affidavit filed in support of the petition the third defendant himself has stated about the property which is not the suit schedule property and the object of the prayer for appointment of Commissioner is only to collect evidence and that is not permissible. Hence, the order passed in I.A.No.2 of 2020 by the learned trial Judge is liable to be reversed.

6. On perusal of the affidavit filed by the third defendant/appellant in support of the application filed for appointment of Commissioner, it is seen that he has alleged about the planting of the coconut trees on the northern side of S.No.554/21. It is alleged that S.No.554/21 also belongs to the third defendant. It is further alleged that the encroached portions



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are situated beyond the four boundaries of the suit property.

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7. Having pleaded so, the petitioner/third defendant has filed the application for appointment of Commissioner to measure the suit property. Admittedly, the suit property is situated in S.No.554/21 and that the third defendant claims that the encroached portion is situate beyond the four boundaries of S.No.554/21. The same ought to have been stated in the suit scheduled properties also. Despite, the learned trial Judge had observed that appointment of Surveyor for the purpose of measuring the property is beyond the scope of the suit, he had chosen to appoint the Advocate Commissioner just to inspect the physical features and submit a report. With the help of the Commissioner's report along with his rough sketch the fact about possession cannot be decided.

8. It is up to the parties to substantiate their respective claims by allowing the Commissioner to visit the property and submit a report on the physical features and that will not in anyway prejudice the plaintiff. Since the Commissioner was appointed at the instance of the defendant,



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the cost of appointment of Commissioner should be borne by the defendant himself irrespective of the result of the proceedings. Since the learned trial Judge had chosen to disallow the help of Surveyor, the parties are at liberty to file an objection to the report of the Commissioner. Hence, I feel the order does not require any interference.

9. In the result, these Civil Revision Petitions are dismissed and the order dated 11.01.2022 passed in I.A.Nos.2 of 2020 and I.A.No.7 of 2021 in A.S.No.10 of 2020 by the learned Principal District Judge, Nagapattinam are confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

**01.08.2022**

Index:Yes No  
Speaking Order:Yes/No  
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To  
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The Principal District Judge,  
Nagappattinam.



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**R.N.MANJULA, J.**

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**01.08.2022**