



*C.R.P.No.1984 of 2019*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1984 of 2019  
and C.M.P.No.12907 of 2019

M.Kannan

... Petitioner

Vs.

M.Subramanian

... Respondent

**Prayer :-** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.01.2019 made in I.A.No.628 of 2018 in I.A.No.240 of 2018 in O.S.No.262 of 2017 on the file of the learned District Munsif, Attur, by allowing the Civil Revision Petition.

For Petitioner : Mr.T.Dhanasekaran

For Respondent : Mr.C.Mouli



*C.R.P.No.1984 of 2019*

**ORDER**

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This Civil Revision Petition has been filed as against the fair and decreetal order dated 30.01.2019, passed by the learned District Munsif, Attur, in I.A.No.628 of 2018 in I.A.No.240 of 2018 in O.S.No.262 of 2017, thereby dismissing the petition filed by the petitioner to scrap the Advocate Commissioner's report.

2. The petitioner is the defendant in the suit in O.S.No.262 of 2017 filed by the respondent for permanent injunction. Pending suit, the respondent/plaintiff filed an application in I.A.No.240 of 2018 to appoint an Advocate Commissioner to inspect the property and survey the same with the help of Surveyor. Accordingly, the Advocate Commissioner was appointed and he inspected the property and measure the same with the help of Surveyor. On filing the Advocate Commissioner report, the petitioner also filed his objection. Thereafter, the petitioner filed an application in I.A.No.628 of 2018 to scrap the Advocate Commissioner report and the same was dismissed by the Court below. Aggrieved by the same, the present Civil Revision Petition.



*C.R.P.No.1984 of 2019*

WEB COPY

3. The learned counsel appearing for the petitioner submitted that even according to the Advocate Commissioner, the Surveyor failed to measure the property B-D line. It causes prejudice to the petitioner. In fact, the suit for permanent injunction, the Advocate Commissioner need not to be appointed and it amounts to collection of evidence. However, the Advocate Commissioner was appointed and his report is highly objectionable, since B to D line was not measured property. In fact, after measuring the suit, the petitioner made request to the Advocate Commissioner to measure B-D line and it was denied by the Advocate Commissioner. It was also categorically admitted in the cross-examination of the Advocate Commissioner. Hence, he prayed to allow this Civil Revision Petition.

4. Per contra, the learned counsel appearing for the respondent submitted that B-D line of the suit property is nothing a cross line. Admittedly, the Advocate Commissioner with the help of Surveyor measured the property in all four lines, viz., A-B, B-C, C-D, D-A and A-C.



*C.R.P.No.1984 of 2019*

In the cross measurement of the suit property viz., B-D line, there was bushes and houses situated as such, the Advocate Commissioner and Surveyor could not be able to measure that said line. That apart, it would not cause any change in the measurement, since all the four lines were already measured with the help of Surveyor. In fact, the Advocate Commissioner found that the petitioner encroached 130 sq.ft., in the respondent's land and 12 sq.ft., in the pathway. Therefore, in order to escape from the clutches of law, the petitioner filed the present petition to scrap the Advocate Commissioner's report. Hence, he prayed to dismiss the present Civil Revision Petition.

5. Heard Mr.T.Dhanasekaran, learned counsel appearing for the petitioner and Mr.L.Mouli, learned counsel appearing for the respondent.

6. The respondent filed suit for permanent injunction, in which an Advocate Commissioner was appointed to survey and measure the property. Accordingly, the Advocate Commissioner measured the property with the help of Surveyor. In fact, the petitioner also filed his objection on the



*C.R.P.No.1984 of 2019*

Advocate Commissioner's report. Thereafter, the petitioner filed the petition to scrap the Advocate Commissioner's report for the reason that the Advocate Commissioner failed to survey the B-D cross line of the property.

7. On a perusal of the report and plan submitted by the Advocate Commissioner revealed that he surveyed the suit property with the help of Surveyor A-B, B-C, C-D, D-A and A-C line. The Surveyor could not able to survey the land in B-D i.e., cross section of the suit property. As per the measurement, it is found that the petitioner is in occupation of 130 sq.ft., in the land belonged to the respondent and 12 sq.ft., in the pathway. Further, the report of the survey revealed that the cross section of the suit property could not be measured, since there are bushes and houses situated in that line. That apart, it would not give any new measurement, since all the four sides of the property already measured properly. Therefore, the Advocate Commissioner's report can be sustainable and the trial Court rightly dismissed the petition filed by the petitioner. This Court finds no infirmity or illegality in the order passed by the Court below.



*C.R.P.No.1984 of 2019*

WEB COPY

8. Accordingly, the Civil Revision Petition stands dismissed.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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*C.R.P.No.1984 of 2019*

WEB COPY

To

1. The District Munsif,  
Attur.



WEB COPY



*C.R.P.No.1984 of 2019*

**G.K.ILANTHIRAIYAN, J.**

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C.R.P.No.1984 of 2019  
and C.M.P.No.12907 of 2019

12.12.2022