



C.R.P. No.3517 of 2023 &
C.M.P.No.21997 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

**Civil Revision Petition No.3517 of 2023 &
C.M.P.No.21997 of 2023**

R.Pankajam

...Petitioner

Vs.

1. C.Subramanian
2. C.Ramasamy
3. Dhanalakshmi
4. Karunanithi

...Respondents

Civil Revision Petition filed under Article 227 Constitution of India to set aside the fair and decreetal order dated 16.03.2023 on the file of learned District Munsif, Sankari in I.A.No.5 of 2022 in I.A.No.39 of 2016 in O.S.No.10 of 2016.

For Petitioner : Mr.N.Umapathy

ORDER

The present petition has been filed to set aside the fair and decreetal order dated 16.03.2023 on the file of learned District Munsif, Sankari in I.A.No.5 of 2022 in I.A.No.39 of 2016 in O.S.No.10 of 2016.



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2. The brief facts of the case are as follows:-

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Originally the respondents 1 & 2 / Plaintiffs had filed a suit in O.S.No.10 of 2016 for the relief of Declaration and consequential reliefs. The petitioner herein is the 3rd Defendant in the suit. Pending original suit, an Interlocutory Application No.39 of 2016 was filed by respondents 1 & 2 / Plaintiffs for Appointment of an Advocate Commissioner and the same was allowed and learned Advocate Commissioner has filed his report and plan on 23.02.2018, to which objections were filed by the petitioner as well as 3rd and 4th respondents on 28.01.2019 and 25.02.2019 respectively. Subsequently, the petitioner had filed a petition in I.A. No. 5 of 2022 under Section 151 of C.P.C. seeking an order to scrap the said Commissioner's Report, which has been filed in I.A.39 of 2016 in O.S.No.10/2016 on 23.02.2018 and Surveyor plan dated 13.11.2017. After considering the arguments on both the sides the trial court had dismissed the I.A.No.5 of 2022 filed by the Petitioner, hence this present Revision.

3. The learned counsel for the petitioner would contend that petitioner is the 3rd respondent in I.A.No.39 of 2016 and 3rd defendant in the above suit. The petitioner has filed her objection to Advocate Commissioner's report on 28.01.2019 and the Advocate commissioner failed to follow the principles of Survey and Boundaries Act to fix the boundaries of the Petition mentioned Property. In fact, no boundaries of



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Petition mentioned property was fixed and physical features of the petition mentioned property was not properly noted and explained in the commissioner report and separate rough plan was not filed by the commissioner to explain the physical features of the petition mentioned property.

4. The learned counsel for the petitioner also contends that the learned Advocate Commissioner has not taken any step to measure the 8 feet road though written instructions were produced to the Advocate Commissioner by the petitioner through her counsel at the time of measurement. The directions mentioned in the surveyor plan is not in accordance with the FMB sketch.

5. The learned counsel for the Petitioner in support of his contentions would place reliance on the decision reported in **(2000) 1 L.W. 893 (Veppanathar @ Karuppannan and Anr. v. Kaliappan)** wherein this Court has held thus:-

“Under Or.26, R. 10, Sub-rule (3) the Court, if it is dissatisfied with the report, can direct setting aside the Report or the Court can direct the Commissioner to rectify the defect or deficiency, taking into consideration the objections evidence let in, in that behalf and to file a supplementary Report”.



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6. On going through the counter filed by the respondents 1 and 2 / plaintiffs in I.A.No.5 of 2022, it could be seen that the learned Advocate Commissioner filed his report and plan on 23.02.2018 and the trial court had closed the petition on 23.02.2018 and also ordered to file objections, if any, within 15 days. But the petitioner has not filed any objections within time. The 1st respondent/Plaintiff No.1 has filed his chief proof affidavit on 24.08.2021 and then adjourned to 02.09.2021 for marking of documents, and then only the petitioner has filed her objections with a huge delay after filing the chief proof affidavit of PW1. The learned commissioner has visited the suit property after due notice to all parties and noted the physical features of the suit property and measured the suit property with the help of the qualified Taluk Surveyor and V.A.O. in the presence of the petitioner and her counsel and in the presence of the defendants 1 and 2 and their counsel. The measurements given in the commissioner's plan and in the F.M.B., are one and the same and the said petition was filed with a malafide intention to protract the proceedings and the petitioner has not followed the principles as laid down under Order 26 Rule 10 (3) of C.P.C and not complied with. Further, the petitioner has filed her objections after a huge delay of 321 days with a petition to condone the delay in I.A.3/2021 and the enquiry was prolonged for more than a year and then filed a similar petition to scrap the commissioner's report and plan in I.A.No.4 of 2022



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and the same was dismissed as not pressed. Hence prayed to dismiss the petition.

7. Heard the learned counsel for the petitioner and perused the documents as well as the counter filed by the respondents before the court below.

8. Now, the point, which arise for consideration before this Court is “Whether the report of the Advocate Commissioner is liable to be scrapped?

9. It is to be noted that **[M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit Vs Modi Transport Service]** reported in **[2022 LiveLaw (SC) 471 CA 1973 of 2022]** dated **11 May 2022**, the Hon'ble Apex Court made the following observation upon the role of Commissioner or Expert appointed by the Court:-

“Order XXVI Rule 9 of the Code gives wide powers to the court to appoint a commissioner to make local investigations which may be requisite or proper for elucidating any matter in dispute, ascertaining the market value of any property, account of mesne profit or damages or annual net profits. Under Order XXVI Rule 11, the Court has the power to issue a commission in a suit, in which examination of adjustment of accounts is necessary, to a person as it thinks fit directing him to make



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such examination or adjustment. When a court issues such a commission to such a person, it can direct the commissioner to make such an investigation, examination and adjustment and submit a report thereon to the court. The commissioner so appointed does not strictly perform a judicial act, which is binding but only a ministerial act. Nothing is left to the commissioner's discretion and there is no occasion to use his judgment or permitting the commissioner to adjudicate and decide the issue involved; the commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission. Hence, there is neither abdication nor delegation of the powers or functions of the court to decide the issue. Sometimes, on examination of the commissioner, the report forms part of the record and evidence. The parties can contest an expert opinion/commissioner's report, and the court, after hearing objections, can determine whether or not it should rely upon such an expert opinion/commissioner's report. Even if the court relies upon the same, it will merely aid and not bind the court. In strict sense, the commissioners' reports are non- adjudicatory in nature, and the courts adjudicate upon the rights of the parties.”

10. That apart, this Court, in a decision reported in **(1986) 1 M.L.J.**

319 (K. Viswanathan Vs. D.Shanmugham Mudaliar and Anr.), has held

as follows:-

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“Under Order 26, Rule 10(2) C.P.C., the report of the Commissioner is evidence in the suit and forms part of the records. The report of the Commissioner has therefore, evidentiary value and can be utilised by either of the parties as evidence in support of their case. This provision cannot be set at naught by scrapping the Report. The effect of scrapping the Report is that the Report which is evidence in the case and part of the record ceases to be so and cannot be referred to by the parties. The mere fact that the Commissioner has failed to note certain features which according to the Defendant were important does not mean that the whole Report should be scrapped. Adequate provision to safeguard the interest of the parties concerned is made in Sub-rule (3) of O.26, Rule 10 C.P.C”

11. It is also worth to recall and recollect the decision of this Court
[K. Azhagammal and Ors. vs. G. Krishnamoorthy and Ors.] (21.08.2020
- MADHC) : reported in MANU/TN/4417/2020, wherein it is held as follows:-

“This Court on early occasions have dealt with several situation explaining the scope for appointment of Advocate Commissioner. The Advocate Commissioner is an Officer of Court, who is expected to file a report to help the Court in resolving issues. At the time of appointing the Advocate Commissioner, the revision petitioners have no grievance and the order of appointment of Advocate Commissioner has not been challenged by the revision petitioners. Merely because,



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the report of the Advocate Commissioner is not in favour of the revision petitioners, the revision petitioners cannot file an application for scraping the report, as it is open to the revision petitioners to file any objections or document or material to discredit the report of the Advocate Commissioner. In other words, the findings of Advocate Commissioner in his report is not final and subject to scrutiny. Unless, the Advocate Commissioner's report is free from bias, irregularity and within the scope of warrant, it cannot be accepted in full. In the present case, this Court is unable to find that the report of Advocate Commissioner is wholly untrue, unreliable or irrelevant. Hence, it cannot be scrapped. However, the lower Court will examine the credibility of report at the time of hearing on the basis of objections raised by the revision petitioner.”

11. In the present case on hand, the Advocate Commissioner has filed the report elaborately after recording the measurements on the basis of documents of title and the contention of parties in their respective pleadings. He has given findings which are relevant. The learned Counsel for the revision petitioner submitted that the Advocate Commissioner has not measured the properties as per the document of title deeds and that therefore, the Advocate Commissioner's report is liable to be scrapped. If the Court starts entertaining applications to scrap the Advocate Commissioner's report, every litigant, who is aggrieved by the report or who finds that the report is not in favour of particular party, will file a petition to scrap the report. The Court cannot indulge in such exercise, as the same will delay the proceedings before any Court. However, the Court may see whether the Advocate



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Commissioner has executed the warrant, so that the report of the Commissioner will have some assistance to the Court to resolve the issue. If the Advocate Commissioner's report is defective, the Court can issue further direction to the same Advocate Commissioner. Similarly, even if the Advocate Commissioner fails to note down certain features, which are required for resolving the issue, the warrant can be re-issued to same Advocate Commissioner to make the report complete and useful.”

12. It is relevant to note that the learned counsel for the Petitioner had relied on the judgement of this **Hon'ble Court in Veppanathar @ Karuppannan and Anr. Vs. Kaliappan** referred supra, wherein in the said judgement also, this Court had directed the court below to consider the objections in detail along with other evidence and pass orders on the objections to the Commissioner's report and also directed the court below to consider whether the defects or deficiency stated in the objection could be rectified by calling for a supplementary report for which necessary direction shall be given by the court. Only if the Court feels that even a supplementary report will not cure the same, the report shall be set aside and a second report will be called for by appointing another commissioner.

13. As far as the present case is concerned, the court below had held that the commissioner's report can be scrapped only after the



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recording of the entire evidence and demonstrating that the commissioner's report is flawed. Further, the suit is pending and presently, the suit is at the stage of Cross examination of PW1 by the defendants. Therefore, the present petition is filed at premature stage and the petitioner ought not to have approached this Court, when the court below has not taken a decision with regard to the quality of the Commissioner's report. It is needless to say that the petitioner is at liberty to cross examine the Advocate Commissioner and falsify the report in accordance with law.

In view of the above, the present Revision is dismissed at the admission stage. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No;
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

The District Munsif, Sankari



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V.BHAVANI SUBBAROYAN J.

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