



WEB COPY



CRP(MD).No.591 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2023

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**CRP(MD).No. 591 of 2022**

**and**

**C.M.P(MD).No.2484 of 2023**

S.Rukmaniammal ... Petitioner/Petitioner/Respondent/ Defendant

Vs.

T.Thangadurai Nadar ... Respondent/Respondent/Petitioner/Plaintiff

**PRAYER :** Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.10.2021 passed in I.A.No.3 of 2020 in O.S.No.34 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District.

For Petitioner : Mr.S.Manickam  
For Respondent : Mr.V.Balasubramanian

### **ORDER**

The defendant in a suit for declaration and permanent injunction is the revision petitioner. Pending suit, the plaintiff has filed I.A.No.1331 of 2016 for appointment of Advocate Commissioner and the said application was allowed on 14.03.2017 with a direction to the



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Commissioner to measure the suit property along with the adjacent properties of the respondent as per Doc.Nos.5, 6 and 7 in the plaint and 69 cents in Survey No.107/B1 and to note down the physical features also, if found feasible and to file a comprehensive report. The Commissioner has filed a report on 24.04.2018. Thereafter, the defendant had filed I.A.No.3 of 2020 to scrap the said Commissioner report on the ground that the Commissioner has not strictly followed the direction issued by this Court. The said application was dismissed by the trial Court. Challenging the same, the present revision petition has been filed.

2. According to the learned counsel appearing for the petitioner/defendant, the Commissioner was directed to measure not only the suit property, but also the adjacent properties of the respondent as per Doc.Nos.5, 6 and 7 in the plaint and also 69 cents in Survey No.107/B1. However, the Commissioner has not measured the entire 69 cents. The Commissioner has also not made any remarks that it is found not feasible to measure 69 cents. Therefore, according to the learned counsel appearing for the revision petitioner, the report has to be scrapped and a fresh Commissioner ought to have been appointed.



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3. Per contra, the learned counsel for the respondent/Plaintiff had contended that the Commissioner has filed a report in the year 2018 and an objection was filed to the Commissioner report in June-2018 itself. There are no allegations as against the Advocate Commissioner relating to bias. Therefore, it is not necessary to scrap the Commissioner's report.

4. I have considered the submissions made on either side.

5. It could be seen from the records that I.A.No.1331 of 2016 filed by the plaintiff for appointment of Commissioner was allowed on 14.03.2017 with a specific direction to the Advocate Commissioner to measure not only the suit property, but also the adjacent properties of the respondent as per Doc Nos.5,6 and 7 in the plaint. The Commissioner was also directed to measure the entire 69 cents in Survey No.107/B1 and he was directed to note down the physical features, if found feasible. However, a perusal of the report indicates that the entire 69 cents in Survey No.107/B1 has not been measured and there are no remarks that it is not feasible to measure property. Therefore, I find that there is some substance in the submission made on the side of the petitioner/defendant.



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However, I do not find that there are any grounds to scrap the Commissioner's report. Therefore, the order passed by the trial Court in I.A.No.3 of 2020 is hereby set aside and the trial Court is directed to reissue the warrant to the same Commissioner to carry-out the warrant as per the direction of Court dated 14.03.2017 made in I.A.No.1331 of 2016.

6. With the aforesaid observation, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

**27.02.2023**

Index : Yes / No  
Internet : Yes / No  
*Rmk*

To  
The District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli  
District.



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**R.VIJAYAKUMAR ,J.,**

*Rmk*

Order made in  
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Dated:  
**27.02.2023**