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C.R.P.(PD) No.2611 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD) No.2611 of 2024

AND

C.M.P.No.13716 of 2024

K.Ravi

... Petitioner

Vs

Manorannitham (Died)

1.Anandhi

2.Koteswari

3.Rajendran

4.Sivagami

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of dismissal dated 15.02.2024 in I.A.No.2 of 2023 in O.S.No.92 of 2009 on the file of the learned Additional District Munsif, Thiruvallur.

For Petitioner : Mr.R.Karunakaran

### **ORDER**

This civil revision petition is against the order dated 15.02.2024 passed by the learned Additional District Munsif, Thiruvallur in I.A.No.2 of 2023 in O.S.No.92 of 2009.

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2. I.A.No.2 of 2003 is an application filed to scrap the report of the Advocate Commissioner which was submitted, pursuant to the orders passed in I.A.No.750 of 2014. The ground on which the petitioner wants scrapping of the report is that the Advocate Commissioner had not measured the property by taking boundary stones of adjacent lands and the surveyor had not cross-checked the measurement of the suit property and further, the surveyor had not measured the entire extent of S.Nos.290/1D and 290/1C. The learned trial Judge has considered the principles laid down by this Court in ***Padmanabhan Vs. Krishnamurthy [2005(3) CTC 619]*** and has come to a conclusion that the mere fact that the Advocate Commissioner had not measured certain extent does not mean that the report has to be scrapped and consequently dismissed the application, against which, this civil revision petition has been filed.

3. Heard Mr.R.Karunagaran, learned counsel for the civil revision petitioner.



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4. The position of law on scrapping of a report has been settled by a judgment of this court in ***Padmanabhan Vs. Krishnamurthy*** (stated *supra*).

The relevant portion from the said judgment is extracted below :

“18. By a careful analysis of the above decisions and other decisions, we may sum up the position:

- i. Under Or. XXVI R.10(3) C.P.C. for any reason if the Court is dissatisfied with the proceedings of the Commissioner, the Court may direct such further inquiry to be made as it shall think fit.
- ii. In case of deficiency in Report, the Court shall direct further inquiry calling for supplementary Report from the same Commissioner. For collecting more details, like to measure the properties with the help of surveyor and to submit the survey plan or for verifying the measurement, the same Commissioner can be reappointed.
- iii. If the Court is dissatisfied with the Commissioner's Report, if considered necessary, it can issue another Commission for collecting more details, without setting aside the Report of the first Commission. If the Report is not satisfactory, the Court may appoint another Commissioner, but not without recording any finding as to its dissatisfaction about the Report of the first Commissioner.
- iv. Under Or.26 R.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 (*K. Viswanathan v. D. Shanmugham Mudaliar and Anr.* (1986) 1 M.L.J.319. (emphasis supplied)

- v. Interference with the result of a long and careful local investigation except upon clearly defined and sufficient grounds is to be deprecated. It is not safe for a Court to act as an expert and to overrule the elaborate Report of a Commissioner whose integrity and carefulness are unquestioned, whose careful and laborious execution of his task was proved by his Report, and who had not blindly adopted the assertions of either party (*Chandan Mull v. Chiman Lal MANU/PR/0044/1939*).
- vi. The Court should first have considered whether the first Commissioner's Report should be superseded and must have recorded its reasons in writing when it came to the conclusion that it should be superseded. Then and then alone, it had jurisdiction to appoint a second Commissioner to do the same work allotted to the first (*Visvanadhan v. Mengamma*



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*AIR 1930 Mad 236 ).*

- vii. The Report of the earlier Commissioner cannot be scrapped, unless there are allegations that the Commissioner has acted in a partial or vindictive manner.
- viii. Mechanical and indiscriminate appointment of more than one Commission, merely because the Court thinks the other party to the proceedings may not be prejudiced or that the expenses for the Commission are going to be borne by the Applicant for the purpose would create an unhealthy practice of not only more than one Report on records, but also would lead to the vice of a person or party to the proceedings not being satisfied with the Commissioner's Report seeking for the appointment of successive Commissioners till he is able to get a Report of his choice (*Gopalakrishnan v. P. Shanmugam AIR 1995 Mad 274*).”

5. Unless and until the learned trial Judge is dissatisfied with the Advocate Commissioner’s report, the question of scrapping the report does not arise. The fact that the Advocate Commissioner has not measured certain extent of the property, which the defendant wants to be measured, cannot be a ground to scrap the report. The appropriate remedy for the petitioner/defendant would be to file an objection to the Advocate Commissioner’s report and thereafter, summon the Advocate Commissioner



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in terms of Order XXVI Rule 10 CPC to the witness box and cross-examine him on these aspects. The learned Judge, after perusing the Advocate Commissioner's report, has no dissatisfaction with the same, hence rejected the application. If certain aspects are not made out in the report, then the defendant can let in evidence to substantiate those aspects, during the course of the trial. This will be in addition to summoning the Advocate Commissioner.

In the light of the above discussion, I am not inclined to interfere with the order of the learned trial Judge and accordingly, this civil revision petition stands dismissed. No costs. Connected C.M.P. is closed.

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Index : Yes/No

Neutral Citation : Yes/No

To  
The Additional District Munsif Court  
Thiruvallur



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V.LAKSHMINARAYANAN, J.

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