



C.R.P. (MD) Nos. 243 and 244 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

CORAM

**THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P. (MD) Nos. 243 and 244 of 2022  
and  
C.M.P. (MD) No.1072 of 2022  
in  
C.R.P. (MD) No.243 of 2022

Vellaiammal

... Petitioner/

Plaintiff

(in both CRPs)

-VS-

Palanivel

... Respondent/

Defendant

(in both CRPs)

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 17.11.2021 passed in I.A.Nos. 2 and 3 of 2021 in O.S.No.23 of 2012 on the file of the District Munsif Court, Periyakulam.

For Petitioner : Mr.V.N.Arjun (in both CRPs)

For Respondent : Mr.K.Appadurai (in both CRPs)



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### **COMMON ORDER**

Heard Mr. V.N.Arjun, the learned Counsel appearing on behalf of the petitioner and Mr.K.Appadurai, the learned Counsel appearing on behalf of the other respondent.

2. These Civil Revision Petitions are filed to set aside the order dated 17.11.2021 passed in I.A.Nos.2 and 3 of 2021 in O.S.No.23 of 2012 on the file of the District Munsif Court, Periyakulam. The petitioner herein filed the said applications to scrap the Commissioner's report and for re-surveying the boundaries. The Trial Court, upon considering the report as well as the objections filed by the petitioner, dismissed the applications, as against, the present Civil Revision Petitions are filed.

3. The learned Counsel appearing on behalf of the petitioner would submit that the measurement with reference to the earlier suit has no bearing as far as the present suit is concerned and the Trial Court ought not to have mentioned the same for the purpose of rejecting the present application. He would further submit that in the objections filed by the petitioner to the



Advocate Commissioner's report, an objection has been specifically taken that with reference to the FMB sketch, the 'G' line and 'F' line were not properly demarcated and the measurement was not carried out by the Advocate Commissioner with proper guidance from the surveyor with reference to the fixed boundaries. They have not taken into account the boundary stones and therefore, the measurement is erroneous. The learned Counsel would submit that without considering the said objection, on its own merits, the Trial Court went only on the ground that the petition is filed for the fourth time and the respondent is repeatedly indulging in filing of applications. The learned Counsel would submit that it is the first application to scrap the report of the Advocate Commissioner.

4. The learned Counsel appearing on behalf of the respondent would submit that there is no error whatsoever in the Commissioner's report and it is always open for the plaintiff to prove otherwise in the trial and when the Advocate Commissioner has gone to the property and has inspected and filed a report as per the directions of the Court, that same need not be scrapped.

5. I have considered the rival submissions made on either side and perused the material records of the case. It can be seen that the petitioner herein



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had filed the application. The prayer for appointment of Advocate Commissioner was originally allowed by the Trial Court and the Commissioner has been appointed. When the Commissioner has carried out the purposes of the warrant as per the directions of the court, thereafter, the petitioner cannot once again find fault with the same. The learned counsel relied upon the judgment reported in **2020 (11) SCC 590 (Ram Lal and others v. Salig Ram and others)** where the Hon'ble Supreme Court held that when the Commissioner exceeds the directions of the Court, then the report can be scrapped. The same is not demonstrated in the present case. Therefore, there is no question of scrapping the Commissioner's report. When it comes to giving weightage of the Commissioner's report, the Court will always consider the nature of the dispute between the parties and the findings of the report of the Commissioner and test the same with reference to the other evidence which are let in by the parties. Keeping open the right of the plaintiff to let in such evidence to prove his own right in the suit, I am of the view that no exception whatsoever can be taken with reference to the order of the Trial Court in dismissing the application to scrap the Commissioner's report.

6. Accordingly, the Civil Revision Petitions are disposed of on the following terms:-



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(i) The order dated 17.11.2021 passed in I.A.Nos.2 and 3 of 2021 in O.S.No.23 of 2012 is upheld;

(ii) Considering the fact that the original suit is of the year 2012, the Trial Court is directed to take up the case for expeditious disposal and dispose of the same, in any event, not later than five months from the date of receipt of a copy of this order.

Consequently, the connected Miscellaneous petition is closed. No costs.

**16.07.2024**

NCC : No

PKN

To

1. The District Munsif Court, Periyakulam.

2. The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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**D.BHARATHA CHAKRAVARTHY, J.**

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