



CRP(MD)No.750 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 18.12.2024

CORAM:

**THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**CRP(MD)No.750 of 2021**  
**and**  
**C.M.P(MD)No.4079 of 2021**

Selvam

... Petitioner/  
Petitioner/  
Defendant

Vs

M.Illavarasapandiyan

... Respondent/  
Respondent/  
Plaintiff

**Prayer:** This Petition is filed under Article 227 of Constitution of India, to set aside the order dated 12.02.2021 in I.A.No.2 of 2020 in O.S.No.57 of 2015 on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

For Petitioner : Mr.R.Muthuraman  
for Mr.K.Prabhu

For Respondent : No appearance

### **ORDER**

The Civil Revision Petition is filed to set aside the fair order and decreetal order dated 12.02.2021 in I.A.No.2 of 2020 in O.S.No.57 of 2015 on the file of



CRP(MD)No.750 of 2021

the Additional District Munsif cum Judicial Magistrate Court, Sivagiri.

WEB COPY

2. Though the respondent has entered appearance, today, there is no representation on behalf of the respondent.

3. The respondent/plaintiff has filed a suit in O.S.No.57 of 2015 before the Additional District Munsif cum Judicial Magistrate, Sivagiri, for declaration and consequential permanent injunction against the revision petitioner/defendant. The revision petitioner/defendant has filed his written statement. Pending suit, the respondent/plaintiff has filed an application in I.A.No.293 of 2015 for appointment of Advocate Commissioner. The learned Magistrate, after enquiry, has passed an order dated 09.06.2015 allowing the commission application. An Advocate Commissioner was appointed and the Advocate Commissioner, after visiting the property, has filed a report on 14.10.2015. Thereafter, the revision petitioner/defendant has filed an application in I.A.No.2 of 2020 under Order 26 Rule 10(3) and Section 151 C.P.C. to scrap the Advocate Commissioner's report and sketch on the ground that the Advocate Commissioner has acted in a biased manner. The learned Magistrate, after enquiry, has passed the impugned order dated 12.02.2021 dismissing the said application. Challenging the said order, the present revision came to be filed.



CRP(MD)No.750 of 2021

4. The learned counsel appearing for the revision petitioner/defendant would submit that as per the Advocate Commissioner's report, the portion marked as AD in the plan is measuring West-East 12.4 metres i.e., 41.33 feet but the respondent/plaintiff in the petition filed under Order 26 Rule 9 C.P.C. itself has stated that it is only 26.75 feet and that the measurement given by the Advocate Commissioner is not only inconsistent to the fact but also contrary to the pleadings of the suit.

5. It is clear that the report filed by an Advocate Commissioner is non-adjudicatory in nature and the Courts are not bound by such report. The Advocate Commissioner's report will only aid/assist the Court in arriving at an appropriate conclusion and it is not conclusive and the findings should be established by adducing proper evidence by the parties.

6. The learned counsel appearing for the revision petitioner/defendant would further submit that the Advocate Commissioner has failed to measure the suit properties with the FMB sketch of the old survey number though it was brought to his knowledge that the measurement in respect of the old survey number varies with that of FMB sketch of the new survey numbers.



CRP(MD)No.750 of 2021

7. In the impugned order, the learned Magistrate has rightly observed that the revision petitioner/defendant has not mentioned in his counter statement that old survey number varies with that of FMB sketch of the new survey numbers. Therefore, merely on the bare plea that the Advocate Commissioner had acted in a biased manner and not properly measured the suit property cannot be the basis for scrapping his entire report.

8. In view of the above, there is no necessity to interfere with the order passed by the trial Court. Accordingly, the Civil Revision Petition is dismissed with a direction to the learned Additional District Munsif cum Judicial Magistrate, Sivagiri, to dispose of the suit in O.S.No.57 of 2015 within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

**18.12.2024**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
csm

To

1. The Additional District Munsif cum Judicial Magistrate,  
Sivagiri.



WEB COPY



CRP(MD)No.750 of 2021



WEB COPY



CRP(MD)No.750 of 2021

**N.SENTHILKUMAR, J.**

csn

Order made in  
CRP(MD)No.750 of 2021  
and  
C.M.P(MD)No.4079 of 2021

Dated : 18.12.2024