



C.R.P.No.989 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2025

CORAM:

THE HONOURABLE MR. JUSTICE **P.B.BALAJI**

C.R.P.No.989 of 2023

and

C.M.P.No.7282 of 2023

1.Balasubramani (Died)

2.Kumaresan

3.Sundaresan

4.Revathi

5.Malathi

[Sole Petitioner Died. Petitioners 2 to 5 are brought on record as Lrs of the deceased sole petitioner Viz.Balasubramani vide Court order Dated..02/06/2025 made in CMP Nos.23642, 23643 and 23647 of 2024 in CRP No.989 of 2023 in CMP No.7282 Of 2023.]

.. Petitioners

Vs.

1.M. Arumugam

2.Manickam @ Pachaamuthu Padaiyachi,

3.Pachiammal

4.Dhankodi

[Sole Petitioner Died. Respondent-4 is brought on record as LR of the deceased Sole Petitioner Viz.Balasubramani vide court order dated..02/06/2025 made in CMP NOS.23642, 23643 and 23647 of 2024 in CRP NO.989 of 2023 in CMP No.7282 of 2023.]

.. Respondents

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PRAYER: Civil Revision Petition is preferred under Section 227 of C.P.C., to set aside the fair order and decretal order passed by the learned District Munsif Court, Rasipuram, Namakkal District in I.A No.3 of 2022 in I.A No.1 of 2022 in I.A No.775 of 2014 in O.S no.57 of 2012 dated 20.01.2023 and allow the civil revision petition.

For Petitioner : Mr.C.Venkatesan

For R1 : Mrs.J.Prithivi

For R2 & R3 : No appearance

For R4 : Not ready notice

ORDER

The revision petitioner is the 3rd defendant in a suit for partition. Pending final decree proceedings in I.A.No.775 of 2014, the revision petitioner filed an application in I.A.No.1 of 2022 seeking to scrap the report submitted by the Advocate Commissioner. The said application was opposed by the 1st respondent. Pending the said application, the revision petitioner filed an application in I.A.No.1 of 2022 seeking permission to cross examine the Advocate Commissioner. The said application was dismissed by the impugned order.



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2. The trial Court recorded a finding that the petitioner had not extended cooperation for the conduct of survey and on such non-cooperation, there was a delay in submission of the Advocate Commissioner's report. The trial Court further noted that the Advocate Commissioner, in compliance with the directions issued by the Court, proceeded to measure the property. On these grounds, the trial Court dismissed the application seeking to cross examine the Advocate Commissioner.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent.

4. The learned counsel for the revision petitioner would bring to my notice that soon after the Advocate Commissioner filed his report, the petitioner filed detailed objections bringing the relevant facts to the notice of the Court. It is contended that the superstructure was not even noticed by the Advocate Commissioner, which omission is reflected in the report. It is argued that the report of the commissioner is liable to be scrapped or atleast the petitioner ought to be granted permission to cross examine the Advocate Commissioner.



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5. Per contra, the learned counsel for the respondent/plaintiff would submit that the trial Court had taken note of the fact that the petitioner had deliberately protracted the proceedings. It was further submitted that pending an application seeking to scrap the Advocate Commissioner's report, the 3rd respondent/revision petitioner seeking permission to cross examine the Advocate Commissioner. Therefore, the learned counsel contended that such application is not maintainable and prayed for dismissal of the revision.

6. I have carefully considered the rival submissions. Admittedly, subsequent to the passing of the preliminary decree, the plaintiff initiated final decree proceedings in I.A.No.775 of 2014. In the said proceedings, an Advocate Commissioner was appointed, who submitted his report on 27.09.2021. The revision petitioner filed objections to the said report and thereafter, raised certain objections pointing out alleged omissions on the part of the Advocate Commissioner, which are pending consideration.



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7. The petitioner has filed I.A.No.3 of 2022 seeking permission to cross examine the Advocate Commissioner. The said application has been dismissed by the trial Court holding that the petitioner had not cooperated with the Advocate Commissioner at the time of inspection and that the application was filed only to protract the proceedings, particularly considering the fact that the suit was instituted in the year 2012.

8. On going through the papers, I find that the trial Court has, no doubt, recorded in the notes paper that the petitioner had not cooperated with the Advocate Commissioner in carrying out the inspection pursuant to the warrant issued to him. After submission of the Advocate Commissioner's report, the petitioner immediately filed objections and at that stage, ought to have sought permission to cross examine the Advocate Commissioner, even though the proceedings were at the stage of final decree.

9. As rightly pointed out by the learned counsel appearing for the respondent, if at all the petitioner had any grievance against the report of the Advocate Commissioner, the same ought to have been raised at the time of passing of final decree and not by filing an application seeking to cross examine the Advocate Commissioner in an application filed to scrap



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the report. The Advocate Commissioner's report is required to be considered by the Court while passing the final decree and by way of an interlocutory application, the petitioner cannot attempt to delay the proceedings. The request for scrapping the report and at the same time, also seeking to cross examine the Advocate Commissioner do not go hand in hand.

10. In the light of the above, the order passed in I.A.No.3 of 2022 in I.A.No.1 of 2022 stands confirmed. However, the petitioner/3rd defendant is afforded an opportunity to cross examine the Advocate Commissioner and Surveyor alone in the final decree proceedings in I.A.No.775 of 2014. Such cross examination shall be completed by the end of January 2026 and the final decree proceedings shall be disposed of on or before the end of February 2026.

11. In the result, this Civil Revision Petition is disposed of. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

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P.B.BALAJI., J.

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