



C.R.P.No.5636 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.5636 of 2025
and C.M.P.No.28206 of 2025

Jeevanantham

... Petitioner

VS.

Durgadevi

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Final Order dated 12.08.2025 made in I.A.No.14 of 2024 in I.A.No.3 of 2019 in O.S.No.89 of 2019 on the file of the II Additional District and Sessions Judge, Tiruppur.

For Petitioner : Mr.K.S.Karthik Raja

ORDER

The Civil Revision Petition is filed challenging the order passed by the learned II Additional District and Sessions Judge, Tiruppur in I.A.No.14 of 2024 in I.A.No.3 of 2019 in O.S.No.89 of 2019, dated 12.08.2025, appointing an Advocate Commissioner to measure the Suit Schedule Property with the help of qualified Surveyor and file a report earmarking encroachment, if any on the property of the respondent/plaintiff.



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2. The respondent herein filed a suit for declaration of title, permanent injunction restraining the defendant from putting up any construction in F.B.C.G portion and for mandatory injunction to remove a construction found in F.B.C.G portion and for other reliefs.

3. Pending suit, an Advocate Commissioner was already appointed and he also filed his report. The said application was closed as petitioner herein failed to file any objections. Thereafter, the petitioner herein filed a petition to condone the delay in filing objection to the Commissioner's report and the same was also allowed and the petitioner was permitted to file objections. Apart from the said application, the petitioner also filed an application seeking to scrap the earlier report filed by the Advocate Commissioner. In the said application, after hearing both the parties, the Trial Court appointed a fresh Advocate Commissioner to measure the suit property with the help of qualified Surveyor. Aggrieved by the same, the petitioner has come before this Court.

4. The learned counsel appearing for the petitioner would submit that the earlier Advocate Commissioner was appointed *exparte* and hence, the



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report submitted by him, without giving opportunity to the petitioner shall be scrapped. He also submitted that the order passed by the Trial Court directing the Advocate Commissioner to measure the suit property and file a report with regard to the encroachment, if any made by the petitioner on the respondent's property, would cause serious prejudice to the petitioner as the petitioner has not committed any encroachment in the property of the respondent.

5. The report of the earlier Commissioner was filed as early as 07.10.2023. In spite of the same, the petitioner has not filed any objections. Therefore, after recording that several opportunities were given to the petitioner, the Trial Court closed the application for appointment of earlier Advocate Commissioner, without any objection being filed by the petitioner. Later, the petitioner filed I.A.No.13 of 2024 to condone the delay in filing objection and the same was allowed and the petitioner was allowed to file objection while condoning the delay. The instant application has been filed seeking to scrap the earlier Commissioner's report. The petitioner has been allowed to file his objection to the earlier report. Whether earlier Advocate Commissioner report can be relied on or not, will be decided by



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the Trial Court at the time of final disposal, after considering his objection on merits.

6. Now, during the arguments of present application, it was found that in the earlier Advocate Commissioner report, he failed to earmark the encroachment portion in the suit property. The main controversy in the suit is with regard to the alleged encroachment and offending construction. Therefore, measurement of the suit property with reference to the title deed of both the parties and earmarking of exact measurements of the encroachment is absolutely necessary to enable the Court to comprehensively decide the controversy involved in the suit. Therefore, the Trial Court appointed a fresh Advocate Commissioner, directing him to measure the suit schedule property with the help of qualified Surveyor and file a report mentioning the encroachment, if any made in the suit property. Such a report by the Advocate Commissioner will certainly help the Court to decide the controversy involved in the suit.

7. I do not find any error in the impugned order passed by the learned II Additional District and Sessions Judge, Tiruppur in I.A.No.14 of 2024 in



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I.A.No.3 of 2019 in O.S.No.89 of 2019, dated 12.08.2025. However, while directing the new Advocate Commissioner to measure the suit property with the help of qualified Surveyor, the Court below has not mentioned that the property shall be measured with reference to the title deed of respective parties. Therefore, the Advocate Commissioner appointed by the Trial Court, is directed to measure the suit schedule property with the help of qualified Surveyor with reference to the title deeds of the respective parties and file a report before the Trial Court earmarking encroachment, if any made in the subject property, with exact measurement.

8. With this clarification, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

14.11.2025

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The II Additional District and Sessions Judge,
Tiruppur.

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S.SOUNTHAR, J.

dm

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