



C.R..P.(PD)(MD).No.617 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.617 of 2022
and
C.M.P.(MD)No.2538 of 2022

Sheik Akbar

...Petitioner

Vs.

1.Mohammed Tahir
2.Syed Ali
3.Mohammed Mydeen

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.01.2022 in I.A.No.9 of 2021 in O.S.No.115 of 2018 on the file of the Sub Court, Tirunelveli.

For Petitioner	: Mr.Kaushik for Mr.R.Maheswaran
For R1	: Mr.V.Meenakshi Sundaram
For R2 & R3	: No Appearance



C.R..P.(PD)(MD).No.617 of 2022

ORDER

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This Civil Revision Petition is filed challenging the fair and decreetal order dated 06.01.2022 in I.A.No.9 of 2021 in O.S.No.115 of 2018 on the file of the Sub Court, Tirunelveli.

2.The petitioner is the second defendant in O.S.No.115 of 2018 filed for declaration, recovery of possession and permanent injunction. In that suit, the petitioner filed I.A.No.227 of 2018 under Order XXVI Rule 9 of CPC for appointment of an Advocate Commissioner. The said petition was allowed and the Commissioner was appointed. The Commissioner has filed a report before the trial Court. The petitioner has also filed objection in I.A.No.7 of 2021 and the same was also accepted. Thereafter, on the ground that no notice was sent to the petitioner by the Advocate Commissioner before inspecting the subject property and during the relevant point of time, the petitioner was not available in India, the petitioner filed another application in I.A.No.9 of 2021 seeking to re-issue the Commissioner's warrant to measure the property once again based on the documents possessed by the petitioner. The said petition was dismissed. Challenging the same, the petitioner has filed this Civil Revision Petition.



C.R..P.(PD)(MD).No.617 of 2022

WEB COPY

3.The learned counsel for the petitioner submits that initially, the petitioner filed an application to appoint an Advocate Commissioner. The said petition was allowed. However, the Advocate Commissioner, without issuing any prior notice to the petitioner, has inspected the subject property and filed a report. During such time, the petitioner was in abroad for his avocation. The Advocate Commissioner measured the property without perusing the documents possessed by the petitioner. Hence, the petitioner has filed the petition seeking re-issuance of Commissioner's warrant. The trial Court without considering all these aspects has dismissed the said petition. Further, while dismissing the application, the trial Court arrived at a conclusion that the report filed by the Advocate Commissioner is perfect. Such finding rendered by the trial Court is not proper.

4.The learned counsel for the petitioner fairly submits that this Court may issue a direction to the trial Court to consider the objections raised by the petitioner with regard to the report filed by the Advocate Commissioner at the time of trial.

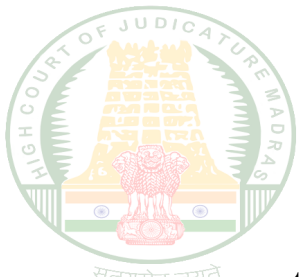


C.R..P.(PD)(MD).No.617 of 2022

WEB COPY

5. Admittedly, the petitioner filed a suit for declaration and permanent injunction. In that suit, the petitioner filed an application seeking to appoint an Advocate Commissioner and the said petition was allowed. After filing of the report by the Advocate Commissioner and after filing objection to the said report, the petitioner filed another application seeking re-issuance of Commissioner's warrant. The Advocate Commissioner is appointed only to note down the physical features of the suit property with a qualified surveyor. The report of the Advocate Commissioner is itself is a piece of evidence to enable the Court to arrive at a definite conclusion and the same is not a conclusive proof either in favour of the petitioner or in favour of the respondent. If the petitioner has grievance over the report filed by the Advocate Commissioner, he can very well object the same by adducing proper evidence before the trial Court. Instead, the petitioner cannot seek re-issuance of Commissioner's warrant and the same is not permissible. The issue was rightly appreciated by the trial Court and the application of the petitioner was rightly rejected.

7. Accordingly, this Civil Revision Petition is dismissed with liberty to the petitioner to canvass all his defense before the trial Court against the



C.R..P.(PD)(MD).No.617 of 2022

WEB COPY

report filed by the Advocate Commissioner by adducing proper evidence. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Sub Court, Tirunelveli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.R..P.(PD)(MD).No.617 of 2022

M.DHANDAPANI,J.

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C.R.P.(PD)(MD)No.617 of 2022

27.06.2025