



CRP(MD). No.1962 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 21/07/2025

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

**CRP (MD). No.1962 of 2025
and CMP(MD) No.11285 of 2025**

R.Shanthi

... Petitioner

Vs

V.Krishnan

... Respondent

PRAYER :-Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29-01-2024 passed in I.A.No.3 of 2023 in O.S.No.302 of 2019 on the file of the District Munsif Court, Rajapalayam.

For Petitioner : Mr.P.Samuel Gunasingh

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 29-01-2024 passed in I.A.No.3 of 2023 in O.S.No.302 of 2019 on the file of the District Munsif Court, Rajapalayam.



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2. Since no adverse orders are going to be passed against the respondent, notice to the respondent is dispensed with.

3. The petitioner is the plaintiff and she instituted the suit in OS No.302/2019 for declaration and permanent injunction. Pending suit, she filed an interlocutory application in IA No.759/2016 for appointment of Advocate Commissioner to note down the physical features and measure the property with qualified Surveyor based on the partition suit and Will. Thereafter, the Advocate Commissioner filed a report before the trial Court and the same reveals that the Advocate Commissioner measured the property on the basis of the revenue records and not on the basis of the partition suit and the Will and hence, the petitioner filed another interlocutory application in IA No.3/2023 for remitting back the warrant of the Advocate Commissioner and for re-issuance of the report. The said application was dismissed. Challenging the same, the petitioner is before this Court.



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4. The learned counsel for the petitioner would submit that pursuant to the order passed by the trial Court in IA No.759/2016, the Advocate Commissioner, after measuring the suit property, has filed a report and since the report of the Advocate Commissioner was insufficient and defective measurement and it is not based on the partition suit and Will, the petitioner filed an interlocutory application, which, the trial Court dismissed on the sole ground that the survey was conducted based on the parent document and revenue records and the Will dated 20.02.1980 and partition suit 24.10.2008 are subsequent to the revenue records and parent document and hence, there is no necessity to measure the same based on the Will and partition suit. The learned counsel however contended that when the measurement is varying according to the records and Will and partition suit, the remitting back of the Advocate Commissioner is necessary and prays for interference.

5. I have considered the rival submissions and perused the materials available on record.



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6. Upon considering the submissions made, this Court is of the considered opinion that the report of the Advocate Commissioner is a piece of evidence to decide the issue and and it will not be the conclusive proof. In the case on hand, the petitioner is the plaintiff and she instituted the suit for declaration and permanent injunction with regard to the common wall as if the defendant is preventing the petitioner from enjoying the common wall by opening the doors, windows and sunshade. It is not in dispute that earlier the petitioner filed an application for appointment of Advocate Commissioner to measure the property and note down the physical features and the same was allowed. Now the grievance appears to be that the Advocate Commissioner so appointed has measured the property based on the document possessed by the petitioner and the revenue records and not on the basis of the partition suit and Will. The petitioner cannot make such a prayer. The petitioner has to establish her title before the trial Court by adducing proper evidence. If the petitioner has any grievance to the report of the Advocate Commissioner, she can very well file her objections to the report and while the Commissioner is appointed, she has no right to force a Commissioner to measure the property. The trial Court has rightly



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appreciated all the issue and rejected the application stating that in order to determine the suit, the report and sketch filed by the Advocate Commissioner is found to be adequate and therefore, the order of the trial Court need not be interfered with. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently connected Miscellaneous Petition is closed.

21.07.2025

NCC : Yes/No
Index : Yes/No

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TO

1.The District Munsif Court, Rajapalayam.

2.VR Section

Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI,J

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**ORDER
IN
CRP(MD) (NPD) No.1962 of 2025**

Date : 21/07/2025