



CRP(MD). No.3790 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 18.12.2025

CORAM

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

**CRP(MD). No.3790 of 2025
and
C.M.P.(MD) No.19950 of 2025**

S.Thiyagarajan

... Petitioner

Vs

1. Muthusankarammal (Died)

1. Venkatesan,

2. Sethugopal,

3. R. Vasantha,

4. Pankajam,

5. Malarvizhi,

6. S. Vithyalakshmi,

7. S. Muhunthan,

8. S. Revathi,

S.Shankarapandian (Died).

9. S. Ramakrishnan,

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10. S. Pramanantham,

11. T. Ananthi,

12. P. Navaneethakrishnan,

13. Krishnamoorthi,

14. Ramesh,

15. Sabarirajan,

16. Sathiyasankar,

17. Muthukumar,

18. S. Anuradha.

... Respondents

PRAYER :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No. 1 of 2025 on the file of the Sub Court, Bodinayakanur, Theni District in O.S.No. 51 of 1994 on the file of the Sub-Court, Periyakulam, Theni District dated 9.10.2025 by allowing the above Civil Revision Petition.

For Petitioner : Mr. C.Vakeeswaran

ORDER

Challenging the order passed in I.A.No.1 of 2025 on the file of the Sub Court, Bodinayakanur, Theni District in O.S.No. 51 of 1994 on the file of the Sub-Court, Periyakulam, Theni District dated 9.10.2025, wherein an appointment of Advocate Commissioner was made, this Civil

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Revision Petition is filed.

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2. Originally the suit was decreed on 16.09.2025 and thereafter, the Advocate Commissioner was appointed to inspect the suit scheduled property with the help of qualified Surveyor and divide the same into 35 equal shares and one of such share for being allotted to the petitioner.

3. The learned counsel for the petitioner submits that they could not take part in the trial, however they have filed a written statement with regard to the claim made in the plaint. Since the measurement of properties is not clear, the petitioner has filed an application.

4. On examining the preliminary decree, item Nos.1 to 8 are houses and building, item No.9 is measuring an extent of 1 acre 80 cents, item No.10 is measuring an extent of 4 acres 90 cents, item Nos.11, 13 to 16 are also measuring to larger extent and the Advocate Commissioner is directed to divide preliminary decree item Nos.9, 10, 11, 13, 14 and 16 of the property into 35 shares with metes and bounds by giving specific extents in feet. Therefore, this order was passed only to identify the



properties based on the preliminary decree.

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5. The learned counsel appearing for the petitioner relied upon the order passed by this Court in ***C.R.P.(MD)No.1297 of 2016 dated 03.01.2023 in the case of Rajkumaran and another vs. Kaliyaperumal and another***, wherein in paragraph Nos.10 and 11, it has been held as under:

" 10. Further, the Hon'ble Supreme Court of India held that in the case of Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another reported in (1973) 2 SCC 40, held that the executing Court cannot go behind the decree under execution. But that does not mean that it has no duty to find out the true effect of that decree. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the Court often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it. The jurisdiction of execution Court does not begin and end with merely looking



at the decree as it is finally drafted. Therefore, the execution Court can very well own to the decree. 11. Admittedly, the Advocate Commissioner had wrongly mentioned the extent of land in respect of the item No.7 of the suit schedule property as 1.25 acres instead of 20 cents out of 45 cents. Therefore, the first respondent was allotted more extent of the property though he was allotted 1/5 th share. Therefore, this Court finds infirmity or illegality in the orders passed by the Courts below and it is liable to be set aside."

6. In the above said case, this Court has considered the order passed by the Hon'ble Supreme Court in ***Bhavan Vaja and Others Vs. Solanki Hanuji Khodaji Mansang and Another reported in (1973) 2 SCC 40*** wherein the Hon'ble Supreme Court has stated that the jurisdiction of the execution Court does not taken note of merely looking at the decree as it is finally drafted.

7. The present Advocate Commissioner is only appointed to measure the metes and bounds of 35 shares and the challenge in appointment of Advocate Commissioner is not only premature but is also a misconception of law for want of devoid of merit. Accordingly, this



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Civil Revision Petition is dismissed. No costs. Consequently, connected
miscellaneous petition is closed.

NCC : Yes/No
Index : Yes / No
Internet :Yes / No
apd

18.12.2025

To
The Sub Court, Bodinayakanur, Theni District.



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N.SENTHILKUMAR, J

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