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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2026

CORAM

THE HON'BLE MRS.JUSTICE N. MALA

**CRP No. 112 of 2026
and CMP.No.420 of 2026**

Raja @ Perumalsamy

..Petitioner(s)

Vs

1. Murthy @ K.R.Boopathi
2. Girija
3. Thangamani
4. Prabakaran
5. Revathy
6. Sabhari Logan
7. Easwaran
8. Boopathy @ Parvathy

..Respondent(s)

This petition has been filed under Section 115 of CPC to set aside the fair order and final order dated 06.06.2025 passed in I.A.No.5/2025 in I.A.No.1 of 2019 in O.S.No.310 of 2008 on the file of the 2nd Additional District Munsif Court, Erode, Erode District.

For Petitioner(s):

Mr.J.Titus Enock

For Respondent(s):

R1 – Mr.B.Kumarasamy

R2 to 4, R8 – No Appearance

Rr 5, 6 And 7 - Insufficient Address



ORDER

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The present Civil Revision Petition has been filed challenging the decretal order dated 06.06.2025 passed in I.A.No.5 of 2025 in I.A.No.1 of 2019 in O.S.No.310 of 2008 on the file of the II Additional District Munsif Court, Erode, Erode District.

2. The petitioner herein is the fourth defendant and the first respondent herein is the plaintiff in the suit in O.S.No.310 of 2008. The suit was filed by the first respondent, for a preliminary decree for partition of his 1/4 share in the suit properties, and for a permanent injunction restraining the defendants from putting up construction in the suit properties.

3. The said suit was decreed as prayed for on 25.11.2013. Pursuant to the preliminary decree passed by the II Additional District Munsif, Erode in O.S.No.310 of 2008, the first respondent/plaintiff filed I.A.No.1 of 2019 for division of the suit property by metes and bounds and for allotment of his 1/4 share by appointing an Advocate Commissioner. After conducting inspection, the learned Advocate Commissioner, submitted his report and plan. Aggrieved by the learned Advocate Commissioner's report, the first respondent herein filed I.A.No.5 of 2019, seeking to scrap the Advocate Commissioner's report



and plan. The petitioner herein filed a counter in the said application stating that the prayer for scrapping the Advocate Commissioner's report and plan was untenable, since any error found in the Advocate Commissioner's report and plan, could be rectified by calling for additional report. The petitioner further stated that without notice to him, the Advocate Commissioner inspected the suit property, thereby depriving him of an opportunity to present his side of the case. The petitioner therefore submitted that the application lacked merits and hence deserved to be dismissed.

4. The learned II Additional District Munsif, Erode upon consideration of the materials and records, allowed the I.A.No.5 of 2019, by scrapping the Advocate Commissioner's report and plan, on the ground that the Advocate Commissioner had failed to measure the property, and in the absence of measurements, equitable division could not be made. Aggrieved by the order passed by the learned Additional District Munsif, the present CRP has been filed.

5. The learned counsel for the petitioner submitted that the II Additional District Munsif, Erode failed to note that there was no necessity to scrap the report of the Advocate Commissioner in entirety. If any additional facts were needed for effective disposal of the petition, the same could have been obtained without scrapping the report.



6. In support of his contention, learned counsel relied on the judgment of this Court in ***K.Viswanathan vs. D.Shanmugham Mudaliar and another*** reported in CDJ 1985 MHC 239.

7. Heard learned counsel appearing for both sides and perused the materials available on record.

8. The facts of the case are undisputed. The only issue to be decided in this Civil Revision Petition is whether the order passed by the learned II Additional District Munsif, Erode, scrapping the report and plan of the Advocate Commissioner is sustainable or not.

9. As rightly contended by the learned counsel for the petitioner, if the learned II Additional District Munsif, Erode, required additional facts/features for effective disposal of the final decree proceedings, he ought to have directed the Advocate Commissioner, to conduct further enquiry and submit a report. For failure of the Advocate Commissioner, to note down the measurements of the suit properties, the entire report and plan of the Advocate Commissioner ought not to be scrapped. Under order 26, rule 10(2) of CPC, the report of the Advocate Commissioner, is treated as evidence and forms part of the record. Therefore, the report and plan of the Advocate Commissioner has evidentiary value and may be used by either party in support of their case.



10. Sub-rule (3) of Order 26, rule 10 CPC empowers the Court to direct further enquiry to be made. Therefore, as per the said provision, the inference drawn is that the report whatever it may be, shall continue to form part of the record and cannot be scrapped. The aforesaid view is echoed in the judgment of this Court in **K. Viswanathan** case (referred to supra).

11. In the said case, this Hon'ble Court held as follows:

“2.The mere fact that the Commissioner has failed to note certain features which according to the defendant were important does not mean that the whole report should be scrapped. Adequate provision to safeguard the interest of the parties concerned is made in sub-rule (3) of Order 26, rule 10, C.P.C. which provides that where the court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit. In the previous order, specific attention of the trial Court was drawn to this provision. Instead of directing further inquiry by the same Commissioner or even by a Commissioner specially appointed, the District Munsif has directed that the report should be scrapped which is wholly impermissible by the provisions of Order 26, rule 10, C.P.C. Under sub-rule (3), there is power given to the Court to direct a further enquiry to be made. This provision itself implies that whatever report has been made must continue to remain part of the record, but if the report is lacking in particulars or is unsatisfactory, a further enquiry can be ordered. The order of the District Munsif scrapping the report is therefore wholly contrary to law.”



12. In view of the above discussions, this Court finds merit in the Civil Revision Petition. Accordingly, the order dated 06.06.2025 I.A.No.1 of 2019 in O.S.No.310 of 2008 on the file of the II Additional District Munsif Court, Erode, is set aside with the following directions:

- i) The Advocate Commissioner's report and plan in I.A.1 of 2019 shall form part of the record and may be used as evidence by either party.
- ii) The learned II Additional District Munsif Court, Erode shall direct the learned Advocate Commissioner to conduct further enquiry with the help of a surveyor and file a fresh report within a time frame to be fixed by the Court.
- iii) The learned II Additional District Munsif Court, Erode shall issue necessary directions to the learned Advocate Commissioner, specifying the particulars of additional facts/features required by him in the Advocate Commissioner's report.

Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes
Speaking order
Neutral Citation: Yes
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N.MALA, J.

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