



C.R.P.(PD)(MD)No.1542 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2026

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)(MD)No.1542 of 2023
and C.M.P.(MD)No.7588 of 2023

N.Hariharan

... Petitioner

Vs

1.E.Ramasubramanian
2.R.Murugeswari

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.03.2023 passed in I.A.No.3 of 2023 in O.S.No.566 of 2018 on the file of the I Additional District Munsif, Tirunelveli.

For Petitioners : Mr.T.Selvan

For Respondents : Mr.S.A.Ganapathyraman

ORDER

This Civil Revision Petition has been filed challenging the



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order passed by the trial Court allowing the application filed by the respondents/defendants seeking scraping of the Advocate Commissioner's report filed in I.A.No.3 of 2023 in O.S.No.566 of 2018 and for appointment of fresh Advocate Commissioner.

2. The petitioner herein filed the present suit seeking mandatory injunction, directing the defendants to remove the obstruction put up by them in suit item Nos.1 and 2 in the lane portion. The plaintiff also sought for permanent injunction restraining the defendants from interfering with the plaintiff's right of using suit item Nos.1 and 2 as common lane. The plaintiff also sought for permanent injunction restraining the defendants from put up any further construction in the suit item Nos.1 and 2. The plaintiff further prayed for mandatory injunction directing the defendants to form channel on the Eastern side of item Nos. 1 and 2. The defendants on their part filed counter claim claiming injunction against the plaintiff.

3. Earlier the petitioner filed I.A.No.1301 of 2018 seeking appointment of Advocate Commissioner to measure the property and file a report. Accordingly, he measured the property and filed a report. The



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respondents/defendants filed a detailed objection to the report filed by the Advocate Commissioner. Thereafter, the instant application had been filed by the respondents/defendants seeking to scrap the report filed by the Advocate commissioner and appoint new Advocate Commissioner to measure the property and also the property described in the counter claim. The said application filed by the defendants was allowed by the trial Court. Aggrieved by the same, the petitioner has come before this Court.

4. The learned counsel appearing for the petitioner would submit that the respondents have not made out any case for scraping of the report filed by the Advocate Commissioner and the trial Court, without giving any finding with regard to the defect in the Advocate Commissioner's report, erroneously allowed the application. He further submitted that scraping of earlier report would cause serious prejudice to the petitioner.

5. The learned counsel appearing for the respondents would submit that earlier Advocate commissioner did not measure the property described in the counter claim. Therefore, the same has to be scraped



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and the property described in the plaint as well as in the counter claim shall be measured with the help of new Advocate Commissioner.

6. In the affidavit filed in support of the petition seeking scarping of the earlier Advocate Commissioner's report and appointment of fresh Advocate Commissioner, it is stated by the respondents/defendants that in the earlier report filed by the Advocate Commissioner, there are lot of contradictions and the defendants filed a detailed objection to the Advocate Commissioner's report. Therefore, according to the respondents/defendants the earlier commissioner's report deserves to be scarped.

7. The respondents/defendants in the affidavit only made vague averments regarding the defects in the report of the Advocate Commissioner. In the affidavit, they did not point out any specific defect in the Advocate Commissioner's report except to say that Advocate Commissioner's report was full of contradictions. It is also stated that respondents already filed a detailed objection to the report of the Advocate Commissioner. When objections have been filed by the



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respondents against the report filed by the Advocate Commissioner, the trial Court shall consider the same. After considering the objection, if the trial Court finds that there is any serious defect in the Advocate Commissioner's report and the same needs to be clarified, the trial Court can either re-issue warrant to the Advocate Commissioner with a specific direction or to go for appointment of fresh Advocate Commissioner. Without considering the objection filed by the respondents/defendants on merits, only based on the vague allegation made in the affidavit, as if there are contradictions in the Advocate Commissioner's report, the trial Court ought not to have scraped the earlier report. Unless a serious defect in earlier Advocate Commissioner's report is pointed out, the trial Court is not justified in scraping the same. In case, the earlier Advocate Commissioner's report is lacking in material particulars, the trial Court is at liberty to re-issue warrant to the Advocate Commissioner to file a report with regard to the defects pointed out by the respondents or to appoint a fresh Advocate Commissioner to measure the property and to file a report. In case, the second report is called for, both the reports can be considered by the trial Court at the time of final disposal and only at the time of final hearing, the Court can come to the conclusion with regard to the reality of the report filed by the Advocate Commissioner. In



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the absence of any specific averments in the affidavit filed by the respondents/defendants mentioning specific defect in the Advocate Commissioner's report, the same need not be scraped.

8. It is also seen from the typed set of papers, earlier Advocate Commissioner was appointed at the instance of petitioner/plaintiff for measuring the suit property and the Advocate Commissioner has also filed a report. In the earlier application, the respondents/defendants did not seek measurement of properties described by him in the counter claim. If the respondents are aggrieved by the order passed by the trial Court appointing Advocate Commissioner to measure the property described in the plaint alone, they should have challenged the order passed earlier in I.A.No.1301/2018. Instead of challenging the order passed in the earlier petition in I.A.No. 1301/2018, it is not open to the respondents to contend that Advocate Commissioner had committed error in not measuring the property described in the counter claim. When there is no warrant directing the Advocate Commissioner to measure the property described in the counter claim, he is not expected to measure the same. Therefore, earlier report of the Advocate Commissioner cannot be scraped solely on the ground



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that he failed to measure the property described in the counter claim. In case, the respondents/defendants feel that measurement of property described in the counter claim is absolutely necessary, it is open to them to file an appropriate application for appointment of very same Advocate Commissioner or for appointment of fresh Advocate Commissioner to measure the property described in the counter claim separately.

9. With these clarifications, the Civil Revision Petition stands allowed and the order passed by the trial Court scraping the earlier Advocate Commissioner's report is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.06.2026

NCC : Yes / No
Index : Yes / No
vsm

To

1.I Additional District Munsif, Tirunelveli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

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