



C.R.P.(MD)No.3677 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.3677 of 2025

and

C.M.P.(MD)No.19461 of 2025

M.Robert

... Petitioner

-VS.-

S.Gnanaprakasi (Died)

M.Sicily (Died)

1.M.Alponsal

2.M.Padhmini

3.M.Viagulam

4.M.Vimala

represented by their Power Agent,
G.Philavendran

5.Johm Berdinet Killer

6.Vijayakumar

7.Ananda Priya

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the order and decreetal order, dated 19.11.2025 of the learned Principal District Munsif of Padmanabhapuram in I.A.No.11 of 2025 in



C.R.P.(MD)No.3677 of 2025

O.S.No.209 of 2016 allowing the said Interlocutory application.

For Petitioner :Mr.K.N.Thampi
For Respondents :Mr.C.Godwin
assisted by Ms.M.Ashvini
Legal Aid Counsel

ORDER

The present Civil Revision Petition has been filed challenging the order passed by the learned Principal District Munsif, Padmanabhapuram in I.A.No. 11 of 2025 in O.S.No.209 of 2016, dated 19.11.2025.

2.Heard Mr.K.N.Thampi, learned Counsel for the Revision Petitioner and Mr.C.Godwin, learned Counsel for the respondents assisted by Ms.M.Ashvini, Legal Aid Counsel.

3.The respondents herein, as plaintiffs, have filed a suit in O.S.No.209 of 2016 against the petitioner herein before the Principal District Munsif Court, Padmanabhapuram, for declaration, recovery of possession and for other reliefs. During the pendency of the suit, an Advocate Commissioner was



C.R.P.(MD)No.3677 of 2025

appointed and he has also filed her report. The petitioner/defendant has filed an application in I.A.No.11 of 2025 to scrap the Advocate Commissioner's report on the ground that the Advocate Commissioner's report is incorrect and improper for admission of evidence. The learned Principal District Munsif, Padmanabhapuram, vide impugned order, dated 19.11.2025, had dismissed the said application on the ground that citing minor variation cannot be a ground to scrap the Advocate Commissioner's report and the petitioner has also filed the application after a long period. Challenging the same, the petitioner has preferred the above Civil Revision Petition.

4.Mr.K.N.Thampi, learned Counsel for the petitioner submitted that the petitioner is the defendant and the respondents are the plaintiffs in the suit. The plaintiffs sought for a relief of declaration, recovery of possession and for other reliefs. The Advocate Commissioner appointed by the Court below has inspected the property and filed a report. The learned Counsel also submitted that the illustrations in the Advocate Commissioner's report for the suit schedule properties are exhaustive and the physical features of the suit properties existed at the time of the filing of the suit had not been noted



C.R.P.(MD)No.3677 of 2025

correctly. Further, the Advocate Commissioner had not mentioned the correctly measured area of petition 'A' schedule property. Further, the encroachment area stated by the Commissioner to answer for Point No.1 is not correct and the plan in the report was also contrary to the schedule properties. He also contended that the Advocate Commissioner deposed that as per the Advocate Commissioner application, the petition 'A' schedule property measures, 3.500 cents, but, as per the report, the plaint 'A' schedule property measures 1.375 cents and that the extent of plaint 'A' schedule property in the report is contrary. He also submitted that the Advocate Commissioner fails to note down the actual enjoyment and ownership of the property of the defendant/petitioner and there was no clarity in the report and the Advocate Commissioner has not measured the properties as per the documents.

5.He also drew the attention of this Court to the suit schedule property along with the plaint. In plaint 'A' schedule property, the Re Survey number was stated as 763/12B3A part and 763/12B3B Part (1.300 cents), in schedule B, Re.S.No.763/12B3A (3.500 cents), in schedule-C, Re.S.No.763/11 (8.876 cents) and in Schedule-D, Re.S.No.763/12B3A part (0.650 cents). The learned



C.R.P.(MD)No.3677 of 2025

Counsel for the petitioner pointed out that the Advocate Commissioner's report reflects that the portion of the plaint 'D' schedule property is having 0.650 cents (763/12B3A part), and the suit 'D' schedule property covers part of Re.S.No.763/12B3A having an extent of 0.552 cents and 0.098 cents in Re.S.No.763/12B3B. He also pointed out that the Advocate Commissioner had gone beyond the scope of the warrant and even in the deposition by the Advocate Commissioner, the Advocate Commissioner has deposed that she did not peruse the plaint and other connected documents at the time of inspection of the property. However, the Court below without considering the above variation in the Advocate Commissioner and without considering the averments in the application filed to scrap the Advocate Commissioner's report, has dismissed the application, which is invalid and hence, he seeks interference of this Court.

6.*Per contra*, Mr.C.Godwin, learned Counsel for the respondents submitted that an interim application was filed before the trial Court in I.A.No. 11 of 2025 for appointment of Advocate Commissioner on 03.08.2017 and the present application to scrap the report of the Advocate Commissioner was filed



C.R.P.(MD)No.3677 of 2025

after a period of eight years, which delay was not properly explained in any manner and such delay defeats the entire claim of the revision petitioner. Further, he submitted that the respondents have also filed an application I.A.No.10 of 2025 to reopen the case, which was dismissed and the said order was not challenged and reached finality. He also submitted that the Court below, after considering the entire evidence available on record and perusing the considering the arguments as advanced by the parties, has correctly passed the impugned order, which does not warrant interference of this Court and hence, he seeks dismissal of this petition.

7.This Court considered the submissions made on either side and perused the materials available on record.

8.The respondents herein have filed a suit in O.S.No.209 of 2016 before the Principal District Munsif Court, Padmanabhapuram, for declaration, recovery of possession and for other reliefs. During the pendency of the suit, an Advocate Commissioner was appointed. The following are the points to be noted by the Advocate Commissioner:



C.R.P.(MD)No.3677 of 2025

“1.To note down the physical features of the petition/plaint schedule properties.

2.To measure the petition/plaint schedule properties and prepare a plan as per lie and Re-survey plan.

3.To note down the construction of the building over the petition/plaint 'B' schedule property. Also note down whether it is constructed by acquiring the petition//plaint 'A' schedule property.

4.To note down the eastern and western entries of the petition/plaint 'A' schedule property.

5.Measure the suit properties and fix the petition/plaint 'A' schedule property.

6.Such other points which are requested to be noted by the petitioner/plaintiffs may also be noted during at the time of visit.”

9.Admittedly, the scope of warrant is only to measure the property and give his report with regard to 'A' schedule property and to see whether there is a building in 'B' schedule property. The report reflects the description of “D” schedule property, which is beyond the scope of the warrant. Further, It is not the question of delay in challenging the report of the Advocate Commissioner. When an Advocate Commissioner is appointed to examine the physical feature and if the Advocate Commissioner files a report beyond the scope of the warrant, then which itself sufficient to scrap the report. Further, from the deposition of the Advocate Commissioner, she had stated that she had not



C.R.P.(MD)No.3677 of 2025

perused the plaint averments and without considering the said deposition, the Court below has passed the impugned order, which is not in accordance with law, which may affect the case of the parties in the suit.

10.In the result, the Civil Revision Petition is allowed and the order passed by the learned Principal District Munsif, Padmanabhapuram in I.A.No. 11 of 2025 in O.S.No.209 of 2016, dated 19.11.2025, is hereby set aside. No costs. Consequently, connected miscellaneous petition is closed. If an application for appointment of fresh Advocate Commissioner is filed, the trial Court shall consider the same on merits and accordance with law.

11.As the suit is of the year 2016, without ascertaining the pendency of the cases in that year in the Court below, all endeavour be made by the trial Court to dispose the suit within a period of one year from the date of receipt of a copy of this order.

12.When the notice was issued to the respondents and their names have also been printed in the cause list, none appears and therefore, this Court



C.R.P.(MD)No.3677 of 2025

appointed Ms.M.Ashvini, learned Counsel as Court appointed Legal Aid Counsel for the respondents. However, after appointment of the Legal Aid Counsel, Mr.C.Godwin, learned Counsel has filed vakalt for the respondents. No fault on the learned Court appointed Legal Aid Counsel, the assistance rendered by her through learned Counsel for the respondents cannot be ignored and the High Court Legal Services Committee attached to this Bench is directed to pay a sum of Rs.10,000/- in *toto* as remuneration to the learned Court appointed Legal Aid Counsel for the respondents. This Court also placed its appreciation for the fair stand taken by the learned Legal Aid Counsel in paving way for the learned Counsel for the respondents.

05.02.2026

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

cmr

To

The Principal District Munsif, Padmanabhapuram.



WEB COPY



C.R.P.(MD)No.3677 of 2025

N.SENTHILKUMAR, J.

cmr

C.R.P.(MD)No.3677 of 2025

05.02.2026