

**IN THE COURT OF THE DISTRICT MUNSIF,
ERANIEL.**

**Present: Thiru. S. Jothi Kailash, B.A., B.L.,
District Munsif, Eraniel.**

Tuesday, the 5th day of August 2025.

I.A. No.3 of 2022.

in

Original Suit No.85 of 2012

Govindara

. . . Petitioner/defendant

-vs-

- 1) Thangam
- 2) Ganesan
- 3) Jegan
- 4) Jose Jayaseelan

. . . Respondents/plaintiffs

This Petition came up before this Court for final hearing on 09.07.2025, in the presence of Thiru. N.S.Arumugavel, Advocate for the Petitioner and Thiru. M.Thankaraj, Advocate for the Respondents. Upon hearing both sides arguments and upon perusing the case records and having stood over till date for Consideration, this Court delivered the following.

ORDER

This Petition has been filed under Order XXVI Rule 10(3) and Section 151 of C.P.C. to set-aside the interim, final commission reports and plan.

2. This petitioner is the defendant in the suit and this case an Advocae commissioner was appointed in IA.No.384/2013 for local investigation for

the purpose of elucidating the matter in dispute. But the commissioner had acted in a bias manner and filed his interim report as well as the final report by concealing relevant material facts. The commissioner had traversed beyond the scope of the pleadings in the commission application, plaint and rough sketch annexed with the plaint and trying to trace out imaginary facts to support the plaintiff's case. He had already on 25.09.2012 filed his objection to the Commission's interim report. Then he had filed applications to reject the commissioner's interim report as IA.No.385/2013, to appoint another fresh commission as IA.No.386/2013. This Honourable Court dismissed all the applications on the ground that 'the commissioner is not yet completed his work and he filed only interim report and further the commissioner did not file his final report and plan and at this stage the question of set aside the commissioner interim report cannot be raised and it is not sustainable' has filed his final report and plan in a biased manner. He had on 02.08.2022 filed his serious objections to the commissioner's final report and plan. He raised objections on 13 points to the final report. That may be read as part of this affidavit. Since the commission's interim report as well as the final reports are totally false, biased, irrelevant and highly contentious, and that both have to be rejected in to in the interest of justice. The interim and final reports of the commissioner are found unreliable and unhelpful for the court to adjudicate the matter in dispute in a just and proper manner. For the ends of justice the reports of the commissioner are

required to be fair and unbiased. But the commissioner failed to act fairly and satisfactorily. The joint perusal of photographs filed along with the written statement and counter claim, the memo submitted to him and his answers in the interim-commission report and in the final report and plan apparently show the bias attitude of the commissioner. More over he was ready to cross examine the commissioner to elicit his biased attitude and unfairness. On 23.09.2012, the commissioner had visited the suit property for the purpose of measuring the suit property and for filing final report. At the time of his visit, his Advocate submitted a memo asking the commissioner to note 5 points. The plaintiff's learned counsel, after going through the said memo, asked the commissioner to measure the Plot NO.1 mentioned in a partition deed as per the rough sketch annexed with the document. To that effect the submitted a memo. The plaintiff's counsel compelled the commissioner to measure first the plot NO.1, which is not the subject matter of the suit, and then to measure the 'B' schedule property. So his counsel submitted another memo, to request the commissioner to measure plot NO.1 based on the Re-survey plan because the plan annexed with the said partition deed does not bear the cross measurements for fixing the points accurately. The commissioner, without applying his mind in the matter in dispute and without considering the scope of the commission application and also of the convincing facts brought before the commissioner by his counsel, refused to measure the plaintiff 'B' schedule property as mentioned in the commission

application. The plaint 'B' schedule property is 1 cent of property sold by the defendant's father with well defined four boundaries mentioned in the sale deed. The plaintiff also described the plaint 'A' and 'B' schedule properties in the plaint, and annexed a rough sketch with the plaint. In his context, there is no difficulty for the commissioner to identify and measure the plaint schedule properties without measuring plot NO.1 mentioned in the partition deed. The commissioner tried to exceed his power and insisted to measure, on the basis of rough sketch, the plot No.1 which is not the subject matter of the suit and no relevancy is attached with it. The commissioner, without measuring the suit property and without note down the 5 points asked by the defendant, left the suit property. The commissioner did not act as a commissioner, but act as a party to the suit. The commissioner filed a false memo before this court on 25.09.2012 as if his advocates prevent him from executing his work. This court recorded the memo on 05.02.2014 and granted police aid to the commissioner. The commissioner visited the suit properties on 07.08.2021 and filed his final report. The compound wall was not constructed in 'B' schedule property as alleged in the report, but it was constructed within the boundary of defendant's property. The compound wall was constructed to the full shape even at the time of 1st visit, but the commissioner stated that an attempt was made to construct a compound wall. The length of the damaged compound wall was not correctly mentioned. The quantum of damaged caused was also not correctly assessed

and mentioned. No encroachment was made at the south western corner of 'B' schedule property as falsely mentioned. The correct plan with correct measurement was not produced. The correct area as per the plan annexed with partition deed and the area as per the plan were not mentioned. The result of the commissioner's local investigation is found unsatisfactory and biased and hence it is extremely necessary to set aside the interim and final commission reports after examining him personally in open court touching the objections raised. Hence this petition.

3. The respondent had also pleaded that the "The Commissioner had acted in a bias manner and filed his interim report as well as the final report by concealing relevant material facts: are utter falsehood. The Advocate/Commissioner is the officer of the Court, appointed by the Honourable Court to execute the commission work in LA No. 156 of 2012. Commissioner has not Inversed beyond The scope of the pleadings in the commission application, plaint and plaint rough sketch annexed with the plaint and trying to trace out imaginary fact to support the plaintiffs' case. There is no pleading in the affidavits stating that, the Advocate/Commissioner is enemical to the defendant to act in a bias manner. The Commissioner has filed interim report and final report by visiting the suit properties in the presence of the petitioner and his two advocates, the plaintiffs and their advocates. As the defendant and his two Advocates have prevented the commissioner to execute commission work, the commissioner

has filed a memo before the Honourable Court to give police protection at the time of the commission work. Accordingly the Honourable Court has issued police protection order to the Colachel Police. The Sub Inspector of Colachel Police Station came to the suit property on 07-08-2021 and in the presence of the defendant and his two Advocates, the plaintiffs and their advocates, the commissioner has measured the suit properties with the assistance of a qualified surveyor and completed his work and filed the final report before this Honourable Court.

4. The averments in para-5 of the affidavit are derived except the filing of false and vexatious objection to the interim report of the commissioner and to appoint another fresh commission. The Honourable Court dismissed all the applications on the ground that the "Commissioner is not yet completed his work and he filed only interim report and further the Commissioner did not file his final report and plan and at this stage the question to set aside the commissioner's interim report cannot be raised and it is not sustainable". The Commissioner has not filed his report and plan in a biased manner. For the final report and plans also the petitioner has filed false and vexatious objections to prolong the suit. The Commissioner's interim report as well as final reports are not totally false, biased, irrelevant and highly contentious. Both need not be rejected in toto. The interim and final reports of the Commissioner are not found unreliable and unhelpful for the Court to adjudicate the matter in dispute in a just and proper manner. The

Commissioner has filed the interim report and final report and plan stating the actual facts at the spot. Commissioner has visited the suit properties after issuing notice to the petitioner's counsel and the respondents counsel and visited the suit properties in the presence of the petitioner and his advocates and noted the actual position of the suit properties and filed interim report before the Honourable Court stating the true facts found at the spot. The petitioner as petitioner filed C.R.P(MD) Nos. 1006 to 1008 of 2014. M.P. No. 1 of 2014 before the Honourable Madurai Bench of the Madras High Court over the dismissal of the three applications filed by the petitioner to scrap the interim report of the commissioner, for appointment of another Advocate/Commissioner, and to summon the Advocate/Commissioner and permit the petitioner to examine the Advocate/Commissioner. In Page 3 of the order the Honourable High Court has clearly held that "Therefore before the Court decides about the appointing or rejecting the report, question of appointing another Advocate/Commissioner or re-issue of warrant to the same commissioner does not arise. In the present case Advocate/Commissioner is yet to execute the warrant fully. He has filed only an interim report. He has prayed for further direction to completely execute the warrant of commission unable the Advocate/Commissioner files his report, the petitioner is not entitled to seek the relief Therefore, he hold that sought for in these applications. There is no infirmity or illegality in the order passed by the trial Court. In the result all the Civil Revision Petitions are

dismissed on 25-08-2014. Consequently, connected miscellaneous petitions also are dismissed. The petitioner with malicious intention and to protract the proceedings filed the above stated three petitions. The Petitioner has suppressed his filing of C.R.P(MD) Nos. 1006 to 1008 of 2014 and MP(MD) No.1 of 2014 before the Honourable High Court and its dismissal dated on 25-08-2014. The Commissioner has filed the interim report, final report and plan fairly by visiting the suit properties and by measuring the suit properties in the presence of the petitioner and his Advocates. Commissioner cannot prepare report and file report and plan on the direction of the petitioner and his Advocates, as he has done the work fairly by stating the true facts available at the spot. The averments in para-6 of the affidavit No bias attitude was exerted by the are denied. Advocate/Commissioner against the petitioner. Nowhere in the affidavit the petitioner has stated that the Advocate/Commissioner is enemical to him. As the petitioner and his Advocates have prevented the commissioner is executing his work, the Commissioner has filed a memo before the Honourable Court to issue police help in executing the work. Honourable Court has ordered police help, and on 23.09. 2012 after issuing notice on both sides with the assistance of the Sub Inspector of Colachel Police Station, the surveyor to measure the suit properties, the Commissioner has measured in the presence of both parties and both side Advocates and measured the A-schedule property in the plaint and to find out plaint A-schedule property the Commissioner has measured

Plot 2 in the partition deed property of the partition deed dated 14-09-1989. To locate the plaint B-schedule property having an extent of one cent on the south eastern side of plot No.1, the Commissioner has measured plot 1 in the partition deed and located the one cent plaint B-schedule property. The Advocate/Commissioner by applying his mind and knowing the actual dispute, by replying for the facts sought for on both sides has executed the Commission work, also by measuring and locating plaint B schedule property. The petitioners' father Mr.Chellappan has executed a sale deed on 01.03.1994 in favour of J. Patric Julion and V.Vijaya Kumar over one cent property on the south eastern corner out of his property i.e., 1 Acre 67 cents and 750 sq. links which is Resurvey No. 254/1A. This one cent property was purchased for the purpose of pathway. To measure and locate the one cent property correctly, the Commissioner has measured and located plot one in the partition deed dated 14-09-1984. The Advocate/Commissioner has done the work as a Commissioner, not acted as a party to the suit, As per the order of appointment by the Honourable Court, he has visited the suit properties and done his commission work. Since the petitioner and his two Advocates have prevented the commissioner in executing the work, he has filed a memo of instructions before the Honourable Court, and the Honourable Court has issued the Colachel Police to give Police protection to the Commissioner while doing his commission work in the suit properties. On the 3rd day of his visit the Commissioner has done the Commission work with the assistance of

a surveyor along with the help of the Sub Inspector of Colachel Police Station and completed his commission work.

5. The compound wall was constructed in the plaint B-schedule property with an intention to reduce the breadth of the plaint B-schedule property. Knowing the filing of the suit, the petitioner and his men started construction of compound wall by intruding into the plaint B-schedule property. Hence on the side of the plaintiffs gave a memo before the Commissioner to visit the suit properties urgently. Hence by issuing notice on both sides the Commissioner in the evening of the date of filing the suit, visited the suit properties, in the presence of the plaintiffs, their Advocates, the defendant and their Advocates and filed interim report stating the real facts. Correct plan, was produced by stating the correct measurement taken at the spot. The reports and plans were submitted by the Commissioner. There is no necessity to set aside the interim and final reports of the Commissioner. If a fresh advocate is to be appointed as second commissioner, such advocate cannot assess the position of plaint B-schedule property on the date of filing this suit. No irreparable loss and injury will be caused to the petitioner in upholding the interim and final report of the Commissioner as he has done his commission work correctly. Hence it is most humbly prayed that this Honourable Court may be pleased to dismiss I.A.No. 3 of 2022 with costs of the respondents.

6. The point for consideration is whether this petition deserves to be

allowed or not?

7. This court carefully scrutinizes available records on hand. The petitioner who is the defendant has filed this petition seeking an order to set aside the commissioner's interim and final report and plan. The petitioner contend that the reports filed by the advocate commissioner is found to be unsatisfactory and biased and the petitioner was also given an opportunity to cross examine the advocate commissioner to elicit his biased attitude and the deposition of the advocate commissioner was also carefully scrutinized. It is pertinent to note that, the petitioner who is unsatisfied with the commissioner's report and plan has already filed objection to both the interim and final reports. The petitioner in his affidavit stated that the advocate commissioner measured the plot No. 1 mentioned in the partition deed, which is not the subject matter of the suit and there is no need for the advocate commissioner to measure the plot no.1 to identify the plaint A and B schedule properties. This court is of view that merely measuring the property which was not subject matter of the suit does not itself amounts to biased attitude of the advocate commissioner. The petitioner further contended that the length of the compound wall was not mentioned and the quantum of damages was also not mentioned which was insisted by the petitioners to the advocate commissioner. But in the report and during his examination also the advocate commissioner has clearly stated that he has mentioned the length of the compound wall. As regards the quantum of

damages the petitioners insisted to note down the number of stones and the rate of each stones and the total value of the damaged stones, which was not reported by the advocate commissioner, this court is of view that merely non mentioning of number of stones and the value of the number of stones damaged does not amounts to irregularity and this court considers that it is irrelevant for elucidating the dispute in the present case. All the other contentions are properly valued.

8. The petitioner who is dissatisfied with the commissioners report has already filed objection to the report which is permitted by law. The petitioners prayer to set aside the advocate commissioners interim and final report solely on the ground that commissioner is biased is not a highly acceptable ground and the petitioner has failed to substantiate the same. This court is of opinion that in every case a commissioners report may be favorable to one party and unfavorable to another and if such reasons were accepted it would result in numerous petition seeking to set aside the commission report by the aggrieved parties, thereby undermining the efficacy of the commission process.

9. Hence from the lights of the above discussion and considering the pendency of the suit which is pending since 2012 this court is not inclined to allow this petition. However a petitioner is at liberty to cross examine the advocate commissioner during trial with regard to the discrepancies.

10. In the result this petition is dismissed. No order as to costs.

This order is dictated to the steno-typist and typed by her directly, in Computer, Corrected and Pronounced by me in Open Court on this 05th day of August 2025.

(Sd/-)
District Munsif
Eraniel

Petitioners side witness & Documents : NIL.

Respondents side witness & Documents : NIL.

Court witness

CW1 – L.G.Raja Kumar

Court Documents

C1 - Interim Report

C2 - Final Report

(Sd/-)
District Munsif
Eraniel

I.A.No.3 of 2022
in
O.S.No.85 of 2012
Fair Order
Date : 05.08.2025.