

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, JAYANKONDAM.

Present: **Tmt.S.Dhanalakshmi, B.A.M.L.,**
Principal District Munsif,
Jayankondam.

On Monday, the 28th day of July 2025

I.A.No.07/2024

-in-

O.S.No.95/2022

Vimalarani

....Petitioner/1st Defendant

// versus //

Charles Penny

...Respondent/ Plaintiff

This petition came up on for final hearing before me on 04.07.2025 in the presence of learned counsel Thiru.R.Sureshkumar for Petitioner/1st Defendant and Thiru.R.Jayaraman for Respondent/Plaintiff and after perusal of petition, affidavit, counter and case records and after hearing both sides arguments and having stood over for consideration till this day this court delivered the following:

ORDER

1. This petition is filed by the petitioner under Order 26 Rule 9 of Civil Procedure Code to pass an order to appoint an Advocate/ Commissioner to inspect the suit property with the assistance of a surveyor, measure the extent and physical features of the suit property and the advocate Court Commissioner directed to filed his report and plan with drawn to scale and thus render justice.

2.The brief averments in the petition is as follows:-

The petitioner is 1st defendant in the suit. The plaintiff after duly inspecting the suit properties, has taken them on lease from defendants 2 to 6 who are the owners of the said properties, for proper consideration and has been in enjoyment thereof. In respect of the suit properties, the defendants have been disputing the validity of the plaintiff lease and ever since the institution of the suit they have been attempting to trespass into the suit properties, obstruct the plaintiff possession, and alter the existing features of the suit properties.

Since the defendants are continuously taking steps to encroach upon the suit properties and to alter their physical features, it has become necessary to have the suit properties separately measured and demarcated with the assistance of a qualified surveyor.

The appointment of a commissioner for measuring the suit properties with the help of a surveyor will not cause any prejudice to the defendants. If a commissioner is appointed to measure the suit properties and file a report along with a plan, it will help avoid unnecessary oral evidence during the course of trial.

3. The averments in the counter filed by the respondent:-

The defendants have also published that the lease deed dated 06.10.2021 obtained by the plaintiff, which has been registered as Document No.3426/21 in the office of the Sub-Registrar, Andimadam, is invalid and unenforceable, and have sought for a decree declaring the said lease deed as null and void. They have further filed the present suit seeking a decree of permanent injunction restraining the first defendant, his men, agents or anybody claiming under him from in any way interfering with the peaceful possession and enjoyment of the suit properties by the plaintiff.

In the above suit, no relief has been sought with regard to any boundary dispute or pathway/right of way dispute. In a suit which has been filed only for declaring the lease deed obtained by the first defendant as invalid, the interlocutory application filed by the plaintiff for appointment of an Advocate Commissioner to measure and note down the physical features of the property with the help of a surveyor is unnecessary and unsustainable. The suit properties are the absolute properties of the defendants. In the present application there is no necessity for the plaintiff to allege that the 1st defendant is attempting to alter the physical features of the property. In the suit, there is no need to fix boundaries with the help of a surveyor. There is no necessity for appointment of a Court Commissioner to inspect the suit properties. The plaintiff has filed the preset application only with an intention to protract the proceedings, as he has no valid case in the suit. Hence, this application is not maintainable and is liable to be dismissed. Therefore, it is prayed that this court may be pleased to dismiss the petition with costs, as it is devoid of merit and filed with mala fide intent.

4. Neither the petitioner nor the respondent have placed any oral or documentary evidences before this court?. Now petition is decide is going to allowed or not?

5. Heard both sides. Records perused. The learned counsels of the petitioner and the respondent argued the replica of averments in the petition and in the counter.

6. The learned counsel appeared on behalf of the petitioner submitted that the petitioner has filed this application to appoint an advocate/commissioner note down the physical features of the petition mention property and to reduce oral evidence which will be recorded by this court.

7. The learned counsel of the respondent in contra submitted that the petitioner cannot seek to appoint the advocate/commissioner for the purpose of collecting the evidence.

8. Considering upon both sides submissions now the court look in to the object of Order 26 Rule 9. Considering both sides rival contentions, this court now inclines upon the case law “**Saraswathi Vs. Visvanathan 2002 with (2) CTC 199**” it was held that the object appoint of commissioner is not to collect the evidence but the elucidate the matter which local in character and which can done by local investigation at the spot. Under Order 26 Rule 9 the court can appoint advocate commissioner at any stage, if it deems fit that local investigation to be requisite for the purpose of elucidating any matter disputed

9. Upon considering the facts and circumstances of this case this court found that an advocate commissioner has to be necessarily appointed in this case. If the petition is going to be allowed it will not cause any irreparable loss or injury to the respondent/Plaintiff.

In the result, Advocate **Tmt.K.Anjammal (M.S.No.2059/2011)** is appointed as an advocate commissioner in this petition to Measure the petition mentioned property with the help of a qualified surveyor and to file his report and sketches. Wherever it is necessary the commissioner can take photos and Videograph and to produce the same. The advocate commissioner is directed to give notice to both parties before inspection. His remuneration is fixed as **Rs.7000/-**. For Plan and report call on: **29.08.2025**.

Dictated to steno-typist, typed by her directly, corrected and pronounced by me in the open court, this the **28th** day of **July 2025**.

Principal District Munsif,
Jayankondam.

Both sides witness and exhibits : Nil

Principal District Munsif,
Jayankondam.