

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF COURT,  
POLLACHI.**

**PRESENT: Thiru. M.S.Sreenath B.A., B.L.,(Hons) L.L.M.,  
Additional District Munsif, Pollachi**

**Monday 07<sup>th</sup> day of July 2025**

**IA. No.2/2025**

**in**

**O.S. No.30/2025**

Balachandran

.... Petitioner/ Plaintiff

-Vs-

Jagadish

.... Respondent/Defendant

This Petition came up for final hearing before me in the presence of Thiru K.Sethupathi, learned Counsel for the Petitioner and in the presence of the Thiru K.P.Shanmugam, as learned counsel for the respondent. Upon hearing the arguments of the both sides and upon perusing the materials on record and having stood over for consideration till this day, this court passes the following:

**ORDER**

This petition is filed under Order 26 Rule 9 for appointment of Court Commissioner to note down the physical features of the suit property and to measure the same with the help of surveyor.

**2. GIST OF THE PETITION**

(2.1) The petition properties belonged to the petitioner's father Kandhasamy Chettiar by way of registered sale deed dated 28.10.1958 on the file of Sub Registrar, Anaimalai in document no.829/1958 and were in his possession since then. Subsequently, a settlement deed on the file of Sub Registrar, Anaimalai in document no.522/1959 was executed by petitioner's father Kandhasamy Chettiar in favour of

the then minors petitioner and her brother Sathasivam with their mother Valliammal as guardian. Subsequently upon attaining majority, petitioner and her brother Sathasivam mutated the patta to their name and were in joint possession. Upon death of said Sathasivam on 24.05.2017, the petitioner and legal heirs of deceased Sathasivam entered into a partition deed dated 15.07.2020 registered on the file of Sub Registrar, Anaimalai in document no.2263/2020 and in which A schedule properties were allotted to the petitioner.

(2.2) In 1969, the respondent's father Thangavel bought from Arumugam Chettiar, the remaining portion of the property left after the sale deed ExP1, by sale deed on the file of Sub Registrar, Anaimalai in document no.1155/1969. On account of the death of Thangavel on 21.11.2014 and by the release deed dated 02.12.2021 on the file of Sub Registrar, Anaimalai in document no.5365/2021 executed by the other legal heirs, the respondent was entitled to his aforesaid property.

(2.3) The petitioner was enjoying the petition properties as per the aforesaid documents from 1958 without any disturbances. On 10.01.2025, the respondent attempted to place a steel gate on the beginning of the petition cart track near the public road. The petition cart track is as per the document 829/1958 which runs from the public road on the western side of the respondent property with a breadth of 12 feet for about 89 meters to north and then turns east with the same breadth runs almost 15.5 meters and then turns north with the same breadth runs almost 16.5 meters and reaches the property of the petitioner. The attempt of the respondent was stopped by the petitioner.

(2.4) The right of cart track has been mentioned in sale deed Ex.P1 as "எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை, ஆள், வகையறா நடந்து கொள்ள வேண்டியது" and also mentioned in sale deed Ex.P4 as "எனது பூமியில் மேல்கோட்டில் தென்வடலாக கந்தசாமிசெட்டியார் பூமிக்கு போகவர வண்டி

ஆட்கள் நடந்துகொள்ள தடம் விட்டுவிட வேண்டியது" and also as 'வெங்கடாசல் செட்டியார் மகன் ஆறுமுகம் செட்டியார் வெங்கடாசல ஈஸ்வரர் கோவில் ஒன்றை கட்டியிருப்பதால் ஷையார் ஜீவதிசை வரை ஷை கோவிலுக்கு போய் வர விட்டுவிட வேண்டியது " However, the respondent has been denying the petitioners right of enjoyment and right by documents and creating disturbances. The respondent has purposefully suppressed the cart track in the release deed. The respondents trying to unlawfully encroached the petition cart track and hence, the petitioner has approached this court for appointment of Court Commissioner to note down the physical features of the suit property and to measure the same with the help of surveyor and if the same is not granted, the petitioner will be put irreparable loss. The petitioner prays the petition may be allowed.

### **3. GIST OF COUNTER**

(3.1) The petition filed by the petitioners is false, frivolous, vexatious, and wholly unsustainable in law and on facts. Save and except those averments which are specifically admitted herein, all other allegations contained in the petition are denied and the petitioners are put to strict proof thereof. The respondent admitted para 4 to para 8 of the petitioners' affidavit which relates to the title deeds and parent documents of the petitioner and respondent. The partition deed dated 15.07.2020 is a self serving document and its recitals will not bind the respondent.

(3.2) In the sale deed Ex.P1 the right of cart track is mentioned as "எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து ஷை 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை,ஆள், வகையறா நடந்து கொள்ள வேண்டியது" This right is only given to the petitioner's father as per the above sale deed. More than this, neither Kandasamy Chettiar nor his legal heirs nor subsequent title holders of that property cannot claim more right in the respondent property. The said cart track right has been extinguished due to non-

existence for very long period viz. from the period of Kandasamy Chettiar. In the partition deed, Ex.P3 the petitioner and his brother are creating a new right in the respondent property by including word வாகனங்கள். The word வண்டி means bullock cart while வாகனங்கள் means mechanized vehicles like tempo and lorry. By including new rights in the subsequent documents the petitioner is making unlawful claim in the respondent property in sale deed Ex.P1, it is mentioned that the cart track runs not south direction on the western end of the respondent property. The right in the cart track presently clean absolutely belongs to the respondent and it is the separate cart track of the respondent. No cart track was ever in existence at any point of time as given in sale deed Ex.P1.

(3.3) The petitioner and his predecessors in title were using only the PAP cart track and ஓடைபுறம்போக்கு situated on the northern side of the petitioner property to reach the petitioner property. Only recently the respondent leveled his property due to effective cultivation and only at this time the respondent form the cart track on the western side in his property and it runs toward north to a distance and turns towards east and reaches the temple situated on the north east corner of the respondent property. The respondent has put up fence between the two properties. Since the petitioner is the uncle of the respondent and on his request, the respondent few years back permitted the petitioner to use respondents separate cart track to reach the petition property and for that purpose removed a portion of the fence and laid a gate.

(3.4) Misunderstandings arose between the parties and the respondent revoked his permission and completely fence the northern side of the property. The present cart track is not the cart track mentioned in sale deed Ex.P1. The south west portion of the petitioner property is filled with huge pile of stones and its physical features will clearly show that there had never been a cart track.

(3.5) The petitioner at the time of filing the suit as forcefully destroyed the fence and the gate and police complaint has been lodged against him. The right of

cart track was given only to Arumuga Chettiyar till his lifetime in sale deed Ex.P4 and subsequent title holders cannot playing this right. This petition has been filed stating false facts. There is no cause of action or merits to the suit. The petitioner has not come forward to this court with clean hands. The prima facie case and balance of convenience is not in favour of the petitioner. The petitioner by way of this petition is only making attempts to create evidence. For this purpose, the petitioner has recently destroyed the fencing and the gate in the northern boundary of the respondent's property and hence the petition may be dismissed.

#### **4. DISCUSSION**

(4.1) Heard both sides. Records perused. Rival submissions considered. On perusal of sale deed Ex.P1, it can be seen that petition cart track has been mentioned as “எனது பு.ஏ.1.73 விஸ்தீரணமுள்ள பூமியின் மேல்கோட்டில் தென்வடலாக இட்டேரியிலிருந்து ஷை 4.00 ஏ.விஸ்தீரணமுள்ள பூமிக்கு உங்கள் வண்டி, கால்நடை, ஆள், வகையறா நடந்து கொள்ள வேண்டியது”. Further in sale deed Ex.P4 by which respondent father bought the property, also mentioned the petition cart track as follows: “ எனது பூமியில் மேல்கோட்டில் தென்வடலாக கந்தசாமிசெட்டியார் பூமிக்கு போகவர வண்டி ஆட்கள் நடந்துகொள்ள தடம் விட்டுவிட வேண்டியது” This clearly mentions the name of the father of the petitioner. The sale deed Ex.P4 was executed nearly 11 years after sale deed Ex.P1 and yet similar recitals as to petition cart track are found on both sale deeds. The respondent has simply denied that the petition cart track was never in existence. When the petition cart track has been mentioned in both of the aforesaid sale deeds but the same has been denied and another cart track has been affirmed by the respondent, this court is of the considered view that the appointment of a Court Commissioner to note down the physical features of the suit property and measure the suit property with the help of surveyor is necessary for

effective and just adjudication of the dispute at hand. Hence, this court is inclined to allow this petition.

IN THE RESULT, this petition is ALLOWED by appointing learned Advocate Thiru.Naveen Vignesh, M.S.No.1388/2021 as Court Commissioner to note down the physical features of the suit property and to measure the same with the help of surveyor. The fee for the Court Commissioner is fixed as Rs.8,000/- which shall be paid to him directly by the petitioner. The learned Court Commissioner may also include photographs taken during his visit in his report as he deems necessary. The learned Court Commissioner shall also include the surveyor sketch in his report. The learned Court Commissioner is empowered to address the necessary authorities for the help of surveyor. For Commissioner Report and Plan C/o.09.09.2025.

Dictated by me, typed by steno typist on my computer and corrected by me and pronounced by me in open court on this the 07<sup>th</sup> day of July, 2025.

Sd/.....(M.S.SREENATH)  
ADDITIONAL DISTRICT MUNSIF  
POLLACHI

Petitioner side witnesses - NIL

Petitioner side documents:

<b>Doc No.</b>	<b>Date</b>	<b>Name of the Documents</b>	<b>Nature of document</b>
Ex.P1	28.10.1958	Sale deed stands in the name of Kandhasamy Chettiyar	Certified copy
Ex.P2	24.05.1959	Settlement deed stands in the the name of Sadhasivam and his brother	Certified copy
Ex.P3	15.07.2020	Partition deed	Certified copy
Ex.P4	13.10.1969	Sale deed stands in the name of Thangavel	Certified copy
Ex.P5	02.12.2021	Release deed	Certified copy
Ex.P6	-	CD	Original
Ex.P7	-	GPS Map camera photo	

**Respondent's side witnesses and documents: Nil**

Sd/.....(M.S.SREENATH)  
ADDITIONAL DISTRICT MUNSIF  
POLLACHI

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Fair Order  
Fair/Draft  
I.A.No.2/2025 in O.S.30/2025  
Date: 07.07.2025  
Additional District Munsif Court, Pollachi

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