

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

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

**Wednesday 11<sup>th</sup> day of February 2026**

**IA.No.6/2025**

**in**

**O.S. No.44/2025**

Rajanarayanan

.... Petitioner/ Defendant

-Vs-

Gurusamy

.... Respondent/ Plaintiff

This Petition came up for final hearing before me in the presence of Thiru.S.Suresh, learned Counsel for the Petitioner and Thiru.M.S.Gnana Janarthan, learned counsel for 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 r/w Section 151 of CPC to direct the advocate commissioner appointed in I.A.No.3 of 2025, to revisit the petition mentioned properties with petitioner's presence to note down the physical features along with the photographer and to file a report.

**2. GIST OF THE PETITION**

(2.1) The petitioner is the defendant in the above suit. The respondent has filed above suit against the petitioner for the decree of declaration and permanent injunction with regard to suit B schedule property claiming it to be a cart track. The

respondents have no right in S.F.No.112/5B2 and no cart track has been in existence the suit B schedule property. The respondent has right of way in 6 links wide pathway on the southern extreme of S.F.No.112/6B to reach S.F.No.112/6C and the same has been mentioned in the documents in document Nos. 91/1998 and 124/2015.

(2.2) The respondent had filed petition in IA.3/2025 to appoint commissioner to note down physical features and to take photographs and the same was allowed without notice to the petitioner herein. The advocate commissioner has also not chosen to inform the petitioner before the visiting of the suit properties. The advocate commissioner along with the respondent and entered into the petitioner property in the absence of the petitioner and took photographs which are irrelevant to the issues in the suit. The respondent also failed to instruct the advocate commissioner to note down the previous east-west cart track on the northern side of S.F.No.112/6A. The petitioner has also filed detailed objections to the report of the commissioner.

(2.3) Hence it is necessary for the advocate commissioner appointed in IA.3/2025 to revisit this suit properties in the presence of the petitioner along with the photographer. If the same is not allowed the petitioner will put to irreparable loss and hardship. No harm will be caused to the respondent by allow the same. Hence the petition may be allowed.

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

(3.1) The petition is false and frivolous and is not maintainable in law. The present suit is for permanent injunction only. The respondent denied the averments of the petition. The respondent reasserted his right over the suit B schedule cart track and denied the 6 links wide pathway. The respondent submitted that the commissioner appointed in IA.3/2025 had visited the property and filed detailed

report, so if there is any objection the petitioner ought to have filed petition for reissue of warrant for revisit of the suit property in the same petition itself and not a separate petition in IA.No.2/2025 which is for temporary injunction and hence the petition is not maintainable.

(3.2) The respondent denied that the commissioner had visited the property and submitted the report without notice to the petitioner. The respondent also denied that the advocate commissioner along with the respondent and entered into the petitioner property in the absence of the petitioner and took photographs which are irrelevant to the issues in the suit. The respondent also denied that the respondent also failed to instruct the advocate commissioner to note down the previous east-west cart track on the northern side of S.F.No.112/6A.

(3.3) The temporary injunction petition of the respondent in IA.2/2025 was posted for orders after both side enquiry and during the enquiry even the petitioner also produced the photographs of the suit "B" schedule cart track and other suit properties and proved that there were no alternative pathways to access the public road. But in the meantime, the petitioner had filed this re-open in the above I.A. by stating that the commissioner has to re-visit the suit properties. It is also humbly submitted that the main issue of the suit is the suit "B" schedule cart tract and the same has to be decided in the trial but the above petition is filed by this petitioner only to drag the suit proceedings and delay the case. The petitioner has filed this petition with a Pre-plan to delay the orders to be passed in the Injunction Petition so that they can fence up the suit "B" Schedule Cart track and prevent the respondent/ plaintiff from using the property.

(3.4) The suit B schedule property has been the only way of access to the suit A schedule property and has been in usage for more than 60 years by the respondent.

The respondent also submits the east west cart track has not been used by the respondent for long time and now it does not give access to the public road and hence there is no alternate way to A schedule property except through B schedule cart track which has been confirmed with the commissioner report. Hence, there is no necessity for commissioner to revisit the suit properties. This petition is filed only to defeat the rights of the respondent and delay the proceedings in order to make changes in the B schedule cart track to prevent the respondent from using it. If the petition is allowed, wrongful intention of the petitioner will be executed and the respondent will be put to irreparable loss. Hence the petition may be dismissed.

#### **4. DISCUSSION**

(4.1) Heard. Records perused. On perusal of records, it can be seen that this petition has been filed independently in O.S.44/2025 and not within the IA.No.2/2025 in O.S.44/2025 as alleged by the respondent. In the commissioner report dated 14.03.2025, the commissioner has stated as follows: “*அதன் பின்பு 25.02.2025 அன்று எனது கடிதம் மூலம் தாவா சொத்தை அன்றையதினமே பிற்பகல் 3.00 மணிக்கு பார்வையிட வருவதாக மனுவாதிபின் வழக்கறிஞர் திரு.M.S.ஞானஜெனார்த்தன் அவர்களுக்கு நேரில் அறிவிப்பு கொடுத்தேன். எதிர்மனுவாதிக்கு தாவாவில் குறிப்பிட்டுள்ள முகவரி எதிர் மனுவாதிபின் விவசாய பூமியில் அமைந்துள்ள வீட்டின் முகவரி ஆகும். நான் நேரடியாக சென்று பார்த்த போது பூட்டிய நிலையில் இருந்தது. அங்கு வேறு எந்த நபர்களும் இல்லை. ஆகையால் மனுவாதி மற்றும் மனுவாதிபின் வழக்கறிஞர் முன்னிலையில் எனது ஆணையில் கண்டுள்ள விபரத்தினை மனுவாதிக்கு விவரித்து மனு சொத்தின் எல்லை விபரங்களை ஊர்ஜிதப்படுத்திக்கொண்டு பிற்பகல் 03.25 மணி முதல் 4.00 மணிவரை மனுவில் கண்டுள்ள சொத்துக்களை பார்வையிட்டு குறிப்பு எடுத்துக்கொண்டேன். என்னுடன் தாவா சொத்துக்களை*

*புகைப்படம் எடுத்துக்கொள்ள புகைப்பட கலைஞர் ஏ.வெள்ளிங்கிரி என்பரையும் அழைத்துச் சென்றேன்."*

(4.2) From the aforesaid extract, it is clear that when the court commissioner had gone to the address of the petitioner herein, the same was locked and no one was around. Therefore it is inferred that the commissioner had not given notice to the petitioner herein before visiting the suit property. It is trite law that though the appointment of commissioner may be ordered *ex parte* without notice to the other side, the visit of the commissioner must be done only after due notice to both parties. It is settled law that the visit conducted without due notice to both parties, the report filed based on the same cannot be taken up for consideration. Hence this court is of considered view that the revisit of the suit properties by the same advocate commissioner is necessary for the effective adjudication of the suit. Since the revisit has been ordered solely on the account of non service of notice by the court commissioner, this court is of the considered view that no new additional fee be ordered for the court commissioner.

IN THE RESULT, this petition is ALLOWED by directing the learned court commissioner Mr.K.K.Thiyagaraj, M.S.No.3620/2010 to revisit the suit properties after due notice to both parties to note down the physical features alongwith photographer and to file a detailed report. Since the revisit has been ordered solely on the account of non service of notice by the court commissioner, the commissioner fee received by him in IA 3/2025 shall be considered as fee for the revisit also. Parties shall bear their own costs.

Dictated by me, typed by steno typist on my computer and corrected by me and pronounced by me in open court on this 11<sup>th</sup> day of February, 2026.

ADDITIONAL DISTRICT MUNSIF  
POLLACHI

-

**Petitioner side witnesses and documents:** NIL

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

ADDITIONAL DISTRICT MUNSIF  
POLLACHI

-----  
**FAIR ORDER**

Fair/Draft

I.A.No.6/2025 in O.S.44/2025

Date: 11.02.2026

Additional District Munsif Court, Pollachi  
-----

