

**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 04<sup>th</sup> day of August 2025**

**IA 10/2024**

**In**

**O.S. No.256/2023**

1. Masaniappan
2. Sathiyaseelan
3. Sivanandham

... Petitioners/ Defendants

**-Vs-**

Gunasekaran

... Respondent/Plaintiff

This Petition came up for final hearing before me in the presence of Thiru B.Selvakumar, learned Counsel for Petitioners, and in the presence of Thiru.M.A.Kanagaraj, 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 7 Rule 11 and Section 151 of CPC by the petitioners to reject the plaint.

**2. SUBMISSIONS OF THE PETITIONER**

(2.1) The 1<sup>st</sup> petitioner is the 1st defendant in the above suit. The petitioners 2 and 3 are the sons of 1<sup>st</sup> petitioner and the defendants 2 and 3 in the above suit O.S.No.256 of 2023. The 1<sup>st</sup> petitioner has humbly submitted that the respondent herein has filed the above suit O.S.No.256 of 2023 against the petitioners for the

relief of Permanent Injunction. There is no cause of action to file the above suit and the averments made in the plaint regarding cause of action is vague and there is no specific cause of action.

(2.2) The plaintiff has made averments in paragraph 5 of the plaint as follows:

"The plaintiff respectfully submit the defendants are the adjacent house owners and they are trying to encroach the plaintiff's peaceful possession and enjoyment of the property".

Further in 6th line of paragraph 6 of the plaint, it has been mentioned as "The defendants also wants to encroach the plaintiff property but the plaintiff prevented the same with help of local friends and relatives".

(2.3) The petitioners have also submitted that in the plaint no specific date has been mentioned. That is the date on which the defendants tried to encroach the suit properties has not been mentioned. The plaintiff must have specifically stated that date on which the defendants tried to encroach the suit properties. Further the plaintiff has not preferred any complaint before the Police about the activities of the defendants. The averments made in the plaint about the attempt by the defendants encroach suit properties is vague and not specific and it is imaginary. Only if date is stated by the plaintiff it can be treated as cause of action. Imaginary cause of action is not a real cause of action.

(2.4) The petitioners submitted that the averments made in paragraph 6 of the plaint are that the plaintiff had taken steps to measure the suit properties with the help of Taluk Surveyor and the same was prevented by the defendants. If it is so the plaintiff ought to have made a prayer in the plaint praying this Court to pass an order directing the Taluk Surveyor to measure the suit properties. But there is no prayer by the plaintiff to measure the suit properties with the help of Taluk Sureyor. The

plaintiff has not impleaded the District Collector, Anaimalai Tahsildhar and Taluk Surveyor for the purpose of measuring the suit property. The plaintiff is doubtful that there is an encroachment by the defendants. But he is not definite about the area of encroachment in his properties. Without a prayer in the plaint to measure the suit properties with the help of Taluk Surveyor the application filed by him under order 26 Rule 9 of C.P.C for the appointment of a Commission/Advocate to measure the suit properties is not maintainable and the orders passed by this Court appointing to a commissioner without giving an opportunity for the defendants to put forth their defence is not correct and is liable to be set aside. The plaint does not disclose real cause of action and the cause of action is vague and imaginary and the plaint is liable to be rejected. Hence the petition.

### **3. COUNTER OF RESPONDENT/PLAINTIFF:**

(3.1) The application is false, frivolous and not maintainable. The application is filed without going through the entire plaint pleading and also without applying the mind. The respondent in para 6 of the plaint clearly mentioned the dates which the petitioner/defendant tried to prevent the respondent from measuring the property. Hence the application has to be dismissed. The allegation stated in para 7 of the application is an abuse process of law and does not hold any legal sanity.

(3.2) The respondent submit that the Government surveyor is co-operating to measure the suit property. But the petitioner is preventing the surveyor from measuring the property. The petitioner even prevented the Advocate Commissioner from measuring the property by taking law in his own hands. Hence the petitioner cannot direct the respondent how to from the suit. It is the liberty of the respondent to add the necessary point to the suit. The allegation stated in para 10 is frivolous. The respondent had pleaded that the petitioner is only trying to encroach the respondent

properties and also clearly pleaded that the attempt to encroach the suit property is prevented by this respondent.

(3.3) Hence the allegation is totally false and clearly process that the application is filed without even understanding the pleading of the point. Hence the application has to be dismissed. The allegation stated in para 10 is also legally untenable. The petitioner cannot interfere with the inherent judicial power of this Hon'ble Court. This Hon'ble court is having power to pass exparte interim order the petitioner is not having any locus standi to question the Judiciary power granted to the judiciary Officer. The petitioner is interfering with the judicial power of this court.

(3.4) The respondent states that the Court Commissioner was directed to measure the property after giving due notice to the petitioner. The learned Advocate commissioner served notice to the petitioner before measuring the property. The petitioner herein after receiving the notice prevented the Advocate Commissioner respondent and the Government Official from measuring the property. The said Act and conduct will clearly amounts to contempt of court. Hence the application has to be dismissed.

#### **4. DISCUSSIONS**

(4.1) Heard both sides. Records perused. Rival submissions considered. The petitioner has prayed for rejection of the plaint in this suit on the ground that no date has been specified for alleged encroachment attempt by the defendants and the absence of such specific date amounts to imaginary cause of action and also on the ground that the plaintiff is not definite about the area of encroachment in his properties.

(4.2) On perusal of the pleadings, it can be seen that though no specific date has been mentioned for attempt of encroachment by defendants, the plaintiff mentions that on 17.05.2023 the defendants prevented the surveyor and VAO from measuring the property. This suit is for permanent injunction to protect the plaintiff's peaceful possession and enjoyment of the suit property. Measuring the property is also part and parcel of the enjoyment of the suit property. Since it is pleaded that the measurement of the suit property was prevented by the defendants, this court is of the considered view that the same amounts to sufficient cause of action for the present suit. Further with regard to the ground that area of encroachment has not been definitely mentioned, mere perusal of the plaint would show that the plaintiff has pleaded only attempt to encroach the property and not actual encroachment. The maintainability of petition under Order 26 Rule 9 CPC by the plaintiff is not one to be decided in this petition. The orders by this court cannot be challenged again before this court since the court has become functus officio. In cumulative effect of the aforesaid discussion, this court is not inclined to allow this petition.

IN THE RESULT, this petition is DISMISSED. No costs.

Dictated by me, directly typed by steno-typist on my computer and corrected by me and pronounced by me in open court on this 04<sup>th</sup> day of August, 2025.

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

**Petitioners and Respondent side Witnesses and documents: Nil**

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

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Fair/Draft Order  
I.A.No.10/24 in O.S.256/2023  
Date: 04.08.2025  
Additional District Munsif Court, Pollachi

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