

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

**Present : Tmt.M.Santhosham., B.Sc., B.L.,**

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvavasu year, 27<sup>th</sup> day of Month of Avani

Friday the 12<sup>th</sup> day of September 2025

**I.A.No.5/2025**

**in**

**O.S.No.3/2024**

1.N.Sundharam

**... Petitioner/Plaintiff**

**/VS/**

1. N.Viswanathan

2. N.Duraisamy

3. P.Chandrasekar

4. The District Collector, Coimbatore

5. The Deputy Director, Town and  
Country planning, Coimbatore

6. The Executive officer,  
Pallapalayam, Town Panchayat

**...Respondents/Defendants**

This petition is coming on this day for final hearing before me in the presence of Mr.P.K.Prabhuram, Advocate for the Petitioner and Mrs.S.Latha Advocate for the Respondents and upon perusing the records, and this court made the following:

**ORDER**

This petition filed by the petitioners under order 26 rule 9 section 151 of CPC to appoint the advocate commissioner to inspect and visit the petition mentioned property and note down the physical features and measure the petition mentioned property i.e., encroached portion the “L” shape water passage canal situated at southern part of S.F.No.55 of Ottarpalayam Village which running towards west –

east direction and at eastern portion towards north – south direction in order to reach the suit property with the help of the Taluk Surveyor and taking photographs of the petitioned mentioned property.

**1. The brief averments of the affidavit filed by the petitioners as follows:**

1.1. The 1<sup>st</sup> and the 2<sup>nd</sup> respondents are brothers and they are sons of one Nanjappa Thevar and Arukkaniyammal. The petition mentioned property situated at Ottarpalayam Village, Pallapalayam Town Panchayat, previously Palladam Taluk, presently Sulur Taluk, Coimbatore. Initially the petition mentioned property and other properties are ancestral and absolute properties of he said Nanjappa Thevar. On 06.06.1968 the said Nanjappa Thevar and his wife Arukkaniyammal along with their legal heirs namely Natarajan, Subramanian, Petitioner / Plaintiff and the respondents 1 and 2 are joint together and executed a registered partition deed.

1.2. In the said Partition Deed “D” schedule of the property allotted to petitioner share, “E” schedule of the property allotted to the share of 1<sup>st</sup> respondent and “F” schedule of property allotted to the share of 2<sup>nd</sup> respondent. Ever since from the date of the said partition deed all of them are put in separate possession and enjoyment of the same.

1.3. In the said Partition deed dated 06.06.1968 in the general clause, specifically mentioned that in S.F.No.55 at southern part towards west – east direction and at eastern portion towards north – south direction a “L” shape water passage canal is situated in order to use by the said Nanjappa Thevar, Petitioner and Petitioner brother Subramanian in order to take the water from the common well situated at Nanjappa Thevar allotted portion and passes through the said “L” shape canal and to reach their allotted portion of property. Ever since from the date of the said partition deed, the terms and conditions mentioned in the partition deed came in to force and effected. By using the said “L” shape water passage canal petitioner

irrigated the petition mentioned property without any hindrances. And more over in the said Partition deed itself clearly it shows that “L” shape water passage canal are common cart track should not be sold to any 3<sup>rd</sup> parties.

1.4. The respondents 1 and 2 are having properties in S.F.No.56 & 57 of Ottarpalayam village. And the respondents 1 and 2 are joint together and alienated some portion of property in favor of 3<sup>rd</sup> respondent. And during the month of January 2023 the respondents 1 to 3 are joint together and tried to disposes or destroy the said “L” shape water passage canal situated in S.F.55 in order to form a Thaar road to reach their property situated in S.F.No.56 & 57 of Ottarpalayam Village. And after knowing the said fact, Petitioner requested the respondents 1 to 3 not disposes or destroy the said “L” shape canal situated in S.F.No.55 of Ottarpalayam Village and the respondents 1 to 3 are threatened Petitioner /Plaintiff with dire consequences. And immediately on 18.02.2023, Petitioner /Plaintiff a legal notice to the respondents 1 to 3 and asked them not to destroy or disposes the “L” shape canal, by farming a road.

1.5. After receiving the legal notice by the respondents 1 to 3 they are joint together and causing life thread to Petitioner / Plaintiff. And 3<sup>rd</sup> respondent promoted a layout in the said property by demolishing the said “L”Shape water passage canal and formed a road in order to reach the layout. And the 3<sup>rd</sup> respondent applied before the respondents 4 to 6 for getting approval for the layout and after knowing the fact on 27.03.2023. Petitioner / Plaintiff issued a objection notice to the respondents 4 to 6. And the respondents 4 to 6 received the legal notice and even thereafter also granted an approval under ம.வ/கோ.உ.தி.௬) எண்.22/2023, திட்ட அனுமதி எண்.23/2023 in favor of the 3<sup>rd</sup> respondent.

1.6. During the month of May 2023 the respondents 1 to 3 formed a thaar road by demolishing the “L”shape water passage canal situated I S.F.No.55 in order to reach the petition mentioned property. The respondents 1 to 3 made a

encroachment of the said “L” shape water passage canal with the help of the respondents 4 to 6 are illegal and has no legal right upon the encroached area i.e., the petition mentioned property. Therefore the illegal encroachment made by the respondents are liable to be removed by way of Mandatory Injunction and restored the same for the usage of my agriculture purpose. The respondents 1 to 3 are causing nuisance to Petitioner / Plaintiff and prevented Petitioner / Plaintiff from using the said “L” shape canal and more over the 3<sup>rd</sup> respondent promoted a house site in the said property by blocking the said “L” shape canal and trying to sale the house site to various persons. The respondents 1 to 3 are very well know about the recital found in the Partition deed dated 06.06.1968 and also wantonly the respondents 1 to 3 are demolishing the said canal and formed a road is fully against the terms and conditions made in the said Partition deed.

1.7. Apart from the said “L” shape water passage canal, there is no other water passage is available in order to reach the petition mentioned property. Petitioner / Plaintiff have no other way to file the present petition for appointment of advocate commissioner to know the encroached portion of the property in order to remove the same. Hence, the petition is to be allowed.

## **2. Written Statement filed by 1<sup>st</sup> to 3<sup>rd</sup> Defendants adopted as Counter Statement:**

2.1. The Plaintiff and Defendants 1 & 2 are the son of Late.Mr.Nanjappa Thevar. It is admitted fact that Late Mr.Nanjappa Thevar during the year 1968 entered into a registered Partition Deed dated 06.06.1968 bearing Doc.No.2215 of 1968 along with his sons namely N.Natarajan, N.Subramanian, N.Sundaram(Plaintiff), N.Vishwanathan and N.Duraisamy (Defendant 1 & 2). The Defendant 1 & 2 were allotted properties as mentioned in Schedules – E& F of the Partition Deed respectively. The suit schedule property being the ‘L’ shaped irrigating / water canal previously flowed through certain portions of the properties belonging to the Defendants 1 & 2 comprised in S.F.No.55, 56 & 57 immediately

after the execution of aforesaid partition but during the course of time due to various alteration of physical features by the shareholders in the respective share, the Plaintiff herein had given away the practice of drawing water for irrigating his land through suit schedule “L” shaped water canal and took an alternate recourse and had already been drawing water directly for irrigation purpose from the adjacent government canal for the past thirty years.

2.2. As early as in the year 1996, the Defendants 1 & 2 while in possession and enjoyment of their allotted shares in the ancestral property settled counterparts of the property bearing S.F.No.55, 56 & 57 which includes the “L” shaped water passage in favour of the Pallapalayam Town Panchayat through three registered settlement deeds dated 17.07.1996 bearing Document No.3702, 3703 & 3704 of 1996. Subsequently, Pallapalayam Town Panchayat converted the “L” shaped suit property water canal to Panchayat road for common pathway. At the time of to get layout approval for lands comprised in S.F.No.56/1B1, 57/1B and 57/2B by the 3<sup>rd</sup> defendant, this existing panchayat roads in S.F.No.55 which were already formed in the year 1996 was shown to the 5<sup>th</sup> defendant. As alleged by the plaintiff in the plaint, the Defendant Nos.1 to 3 never demolishing the “L” shape water passage and formed thaar road in the month of May 2023.

2.3. The Plaintiff did not raise any objection as the plaintiff had an alternate recourse and had already been drawing water directly for irrigation purpose from the adjacent government canal. More than 27 years have passed since alteration of the physical feature of the suit schedule property. Therefore, from 1996 onwards the Plaintiff has been in knowledge of alteration of the physical feature of the suit schedule property

2.4. While things stood thus, the Defendants 1 & 2 for the well being of their families divided their ancestral properties in S.F.No.55, 56 & 57 into residential

plots and sold the same to a third party who had developed a well-planned project namely Sri Nanjappa Nagar in Otterpalayam Village, Coimbatore. The properties were divided into residential plots and sold to various subsequent purchasers. While having gotten their layout approved by Pallapalayam Town – Panchayat, the purchasers of the above mentioned plot had approached the Defendants 4 to 6 around the year 1996 to obtain approval for laying that road in the property given as settlement to the Panchayat.

2.5. The Defendants 1 & 2 wish to place on record that the Plaintiff herein has fraudulently forged title and alienated major portions of undivided ancestral joint family property in S.F.No.80/2 mentioned in Schedule – G of the above said partition deed dated 06.06.1968. A suit has been preferred by one of the co-sharers namely S.Sathish Kumar against this Plaintiff herein in OS.No.402/2023 before the I Additional District Judge, Coimbatore. The Defendant 1 & 2 are also co-sharers in the said undivided ancestral property and have been included as Defendants 2 & 3 therein. In the above said suit the Defendants 1 & 2 herein have filed their written statement stating that they are also entitled for 1/5th share in said ancestral property.

2.6. The alleged suit schedule “L” shaped water canal has been converted to panchayat road for public as well as the adjacent plot owners. Hence, the balance of convenience is in favour of the Defendants 1 & 2. Hence, the petition is to be dismissed.

3. No Witnesses were examined on either side, and no documents were marked as exhibits.

#### **4. Points for Consideration:-**

Whether the petition under order 26 rule 9 section 151 of CPC to appoint the advocate commissioner is to be allowed?

**5. Points :-**

5.1. The petition affidavit, counter and the enquiry of both parties were carefully considered. Heard the counsels for both the parties. The suit documents were carefully examined. The main suit is seeking for Permanent injunction and Mandatory injunction. The main suit is pending for framing of issues.

5.2. The Petitioner/Plaintiff has filed this present petition for appointment of advocate commissioner to inspect and visit the petition mentioned property and note down the physical features and measure the petition mentioned property i.e., encroached portion the “L” shape water passage canal situated at southern part of S.F.No.55 of Ottarpalayam Village which running towards west – east direction and at eastern portion towards north – south direction in order to reach the suit property with the help of the Taluk Surveyor and taking photographs of the petitioned mentioned property.

5.3. The Petitioner stated that the Partition deed dated 06.06.1968 in the general clause, specifically mentioned that in S.F.No.55 at southern part towards west – east direction and at eastern portion towards north – south direction a “L” shape water passage canal is situated and use by the said Nanjappa Thevar, Petitioner and Petitioner’s brother Subramaniam to take the water from the common well situated at Nanjappa Thevar allotted portion and passes through the said “L” shape canal and to reach their allotted portion of property. In the said Partition deed itself clearly it shows that “L” shape water passage canal are common cart track should not be sold to any 3<sup>rd</sup> parties.

5.4. The respondents 1 and 2 are having properties in S.F.No.56 & 57 of Ottarpalayam village. During the month of January 2023 the respondents 1 to 3 are joint together and tried to disposes or destroy the said “L” shape water passage canal situated in S.F.55 to form a Thaar road to reach their property situated in S.F.No.56 &

57 of Ottarpalayam Village.

5.5. The Respondents objected that the property bearing S.F.No.55, 56 & 57 which includes the “L” shaped water passage in favour of the Pallapalayam Town Panchayat through three registered settlement deeds dated 17.07.1996 bearing Document No.3702, 3703 & 3704 of 1996. Subsequently, Pallapalayam Town Panchayat converted the “L” shaped suit property water canal to Panchayat road for common pathway. At the time of to get layout approval for lands comprised in S.F.No.56/1B1, 57/1B and 57/2B by the 3<sup>rd</sup> defendant, this existing panchayat roads in S.F.No.55 which were already formed in the year 1996 was shown to the 5<sup>th</sup> defendant. More than 27 years have passed since alteration of the physical feature of the suit schedule property. Therefore, from 1996 onwards the Plaintiff has been in knowledge of alteration of the physical feature of the suit schedule property.

5.6. The original suit is filed for Permanent injunction and Mandatory injunction. The real dispute is whether “L” shape water passage canal situated in S.F.No.55 of Ottarpalayam village which running along. In order to resolve the real dispute between the petitioner and the respondent, the above petition is allowed and ordered accordingly.

5.7. In the result, Mr. P. Kalaiarasan, is appointed as Advocate Commissioner. The Advocate Commissioner also directed to issue notice to both parties and their counsels before visit the petition mentioned property along with Taluk Surveyor and note down the physical features and measure the petition mentioned property i.e., whether “L” shape water passage canal situated at southern part of S.F.No.55 of Ottarpalayam Village which running towards west – east direction and at eastern portion towards north – south direction to reach the suit property is encroached and taking photographs of the petitioned mentioned property and to file his detailed report and plan. His remuneration is fixed as Rs.10,000/- shall

be paid by Petitioner/Plaintiff after filing his Report and Plan. For Advocate Commissioner report and plan call on 13.10.2025.

Dictated to the Steno typist and directly typed by him in computer, corrected and pronounced by me in open court this the 12<sup>th</sup> day of September 2025.

Sd/M.Santhosham

**District Munsif,**

**Sulur.**

**List of witnesses and documents on petitioner side:-**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

Sd/M.Santhosham

**District Munsif,**

**Sulur.**

Draft/ Fair Order  
I.A.No.5/2025 in  
O.S.No.3/2024  
Dated:12.09.2025  
DMC, Sulur