

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

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

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvvasu year, 1<sup>st</sup> day of Month of Karthigai

Monday the 17<sup>th</sup> day of November 2025

**I.A.No.5/2024**

**in**

**O.S.No.31/2024**

1. Neelamani
2. Dhanapal
3. Sivakumar

**... Petitioners/Plaintiffs**

**/VS/**

1. The State Represented by  
District Collector, Coimbatore
2. Tahsildar, Sulur
3. Palanisamy

**...Respondents/Defendants**

This petition is coming on this day for final hearing before me in the presence of Mrs.D.Chitra, Advocate for the Petitioners and Mr.R.Jayakumar, Advocate for 3<sup>rd</sup> Respondent and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents are called absent set exparte and upon perusing the records, and this court made the following:

**ORDER**

This petition filed by the petitioner under order 26 rule 9 of CPC to appoint an advocate commissioner along with Taluk Surveyor to measure the petition mentioned property and to filed his report and plan.

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

1.1. The 3<sup>rd</sup> petitioner is the 3<sup>rd</sup> plaintiff and 1<sup>st</sup> petitioner is the mother of 3<sup>rd</sup> petitioner, 2<sup>nd</sup> petitioner is brother of 3<sup>rd</sup> petitioner. Petitioners/plaintiffs filed the main suit for permanent injunction. The petitioners/plaintiffs filed the main suit in respect of suit properties in S.F.No.748/1B and 748/1C of Neelambur village. The S.F.No.748/1B is a separated and subdivided area for the petitioners/plaintiffs. The S.F.No.748/1C is jointly owned by the petitioners/plaintiffs and the 3<sup>rd</sup> defendant. Therefore the court must clarify the correction determination of the properties in dispute, it is necessary to appoint an Advocate commissioner along with the help of Taluk Surveyor to measure the four boundary of the disputed property and file his report and plan. Hence this petition is to be allowed.

**2. The brief averments of Counter statement filed by the 1<sup>st</sup> Respondent as follows:**

2.1. The petition is false, frivolous, vexatious and not maintainable both under law and on the facts of the case. The allegations in the affidavit filed in support of the petition are all false and incorrect. The petitioners are not entitled to the relief prayed for or to any other relief. The petitioners have filed the above suit for declaration, Mandatory injunction and Permanent injunction against this respondent/ 3<sup>rd</sup> defendant. The petitioners have suppressed very many material particulars and the real facts that this defendant purchased an extent of 1.41 ½ Acres being eastern half of the S.F.No.748 of Neelambur Village except 5 cent cart track. This defendant's mother Ammasai Ammal purchased the above said 5 cents cart track. From the above said two sale deeds, the defendant was in possession and enjoyment of the above said 1.41 ½ acres as absolute and exclusive owners.

2.2. The Tamil Nadu state government acquired a portion of the land in S.F.No.748 for pond (ஆச்சான் குளம்). After Government acquired the land in S.F.No.748, this defendant's land and part of the above said cart track sub divided as

S.F.No.748/1C and this defendant common well and part of the common cart track sub divided as S.F.No.748/1D. After the Government acquired the land in S.F.No.748, the plaintiff's family land was sub divided as S.F.No.748/1B. From the date of the Government acquired the land in S.F.No.748, this defendant is in exclusive possession and enjoyment of the S.F.No.748/1C as absolute and exclusive owner. This defendant has put up live fence, the plaintiffs remove the plaintiff's live fence and they put barbed wire fence on the western side boundary of this defendant's land 8 years before. This defendant is absolute and exclusive owner of the land in S.F.No.748/1C of Neelambur village and he is in possession and enjoyment of the land in S.F.No.748/1C from the date of his sale deed dated 24.05.1943. The plaintiffs family members were colluded together and created the alleged partition deed dated 14.06.1967 and gave petition to the revenue officers for filing this false suit and they have no right and title in the land of S.F.No.748/1C of Neelambur Village and they are not in possession and enjoyment of the S.F.No.748/1C.

2.3. The plaintiffs are not the owners of the S.F.No.748/1C and they are not having any locus standi to claim patta transfer in S.F.No.748/1C. Hence the above suit is having no cause of action against this defendant. The plaintiffs filed this false suit in order to illegally grabbing this defendant's properties in S.F.No.748/1C. The above suit is barred by the Tamil Nadu Patta Pass Book Act-1983. The plaintiffs have not come to the court with clean hands. There are no merits in the suit claim of the plaintiffs.

2.4. After Government acquired the land in S.F.No.748, the plaintiffs land sub divided as S.F.No.748/1B, which is extent of 0.42 Acres only. The plaintiffs family members were colluded together and created the alleged partition deed dated 14.06.1967 and gave petition to the revenue officers for filing this false suit and they have no right and title in the land of S.F.No.748/1C of Neelambur Village and they

are not in possession and enjoyment of the S.F.No.748/1C. The 3rd defendant is not a party to the above said partition deed dated 14.06.1967 and after filing this suit only this defendant came to know about the said partition deed dated 14.06.1967.

2.5. This defendants' family members, without measure the land and part of cart track, they created the partition deed dated 05.10.1981 and total area in S.F.No.748/1C was wrongly mentioned an extent of 0.90 Acres instead of 0.98 Acres in the above said partition deed 05.10.1981, which was not created any right and title to the plaintiffs in S.F. No.748/1C. This defendant purchased an extent of 1.41 ½ Acres being eastern half of the S.F.No.748 of Neelambur Village under a sale deed dated 24.05.1943 and this defendant is absolute and exclusive owner of the balance land in his 1.41 ½ acres, after Government acquired the land in S.F.No.748. The plaintiffs including their name in S.F.No.748/1C without notice and knowledge of this defendant, which can't created any right and title to the plaintiffs in this defendant land in S.F.No.748/1C.

2.6. The plaintiffs not have any right and title to claim patta in S.F.No.748/1C. This defendant is absolute owner of the S.F.No.748/1C and till today he not sold his land to the plaintiffs or any others. The above application filed for appointment of advocate commissioner to note down the physical features of the suit properties itself clearly seen that the above commission petition filed for collecting evidence for their case. The object of Order 26 Rule 9 of Civil Procedure is not assist a party in order to collect evidence for the case.

2.7. The petitioners have filed the above suit for declaration that they are the absolute owner of the suit properties and permanent injunction against this respondent. Therefore the main issue in the above suit is Whether the petitioners/plaintiffs have any right or title in the suit properties? or not? and Whether

the petitioners/plaintiffs established their title of the suit properties? or not?. The present application to appointment of advocate commissioner to note down the physical features of the suit properties, it is irrelevant and not necessary to decide the fact in the issue of the suit. Hence this application is unnecessary one.

2.8. The petitioner filed this application only to collect evidence for their case. The above suit for declaration and permanent injunction filed on the basis of ownership. The ownership right can be decided only on the basis of the documentary and oral evidence submitted before this court. This court can decide the above case only on the basis of the relevant document and oral evidence pertaining to the title of the suit properties. This application filed having wrong intention of dragging the proceedings of the suit. Hence, the petition is to be dismissed.

3. No Witnesses were examined on either side. On the side of Respondent/ 3<sup>rd</sup> defendant side Ex.R.1 to R.3 are marked. No documents were marked as exhibits on petitioners/plaintiffs side.

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

Whether the petition under order 26 rule 9 of CPC to appoint an advocate commissioner along with Taluk Surveyor to measure the petition mentioned property and to filed his report and plan 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 filed for Declaration, Mandatory injunction and Permanent Injunction. Now the suit is pending in the stage of framing

of issues. At this stage the plaintiffs filed this petition to appoint an Advocate Commissioner to measure the petition mentioned property along with Taluk Surveyor.

5.2. The petitioners/plaintiffs stated that, The S.F.No.748/1B is a separated and subdivided area for the petitioners/plaintiffs. The S.F.No.748/1C is jointly owned by the petitioners/plaintiffs and the 3<sup>rd</sup> defendant. Therefore the court must clarify the correction determination of the properties in dispute

5.3. The respondents/defendants objected that, the petitioner filed this application only to collect evidence for their case. The above suit for declaration and permanent injunction filed on the basis of ownership. The ownership right can be decided only on the basis of the documentary and oral evidence submitted before this court. This court can decide the above case only on the basis of the relevant document and oral evidence pertaining to the title of the suit properties. This application filed having wrong intention of dragging the proceedings of the suit. The above suit is barred by the Tamil Nadu Patta Pass Book Act – 1983. Hence, the appointment of Advocate/Commissioner is unnecessary one.

5.4. The original suit prayer is for Declaration, Permanent injunction and Mandatory injunction. The S.F.No.748/1C is jointly owned by the petitioners/plaintiffs and the 3<sup>rd</sup> defendant. The real dispute between the Petitioners/Plaintiffs and Respondent/3<sup>rd</sup> defendant is determination of property. In order to resolve the real dispute between the petitioners and the respondent, the above petition is allowed and ordered accordingly.

In the result, this court appoint Mrs.R.R.Priyadharshini, (MS.No.4362/2019), 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 and to note down the physical features and to measure the properties of the both petitioners with reference to their respective title deed and survey fields with reference of revenue records along Taluk Surveyor and file his report and plan. Her remuneration is fixed as Rs.10,000/- shall be paid by Petitioners/Plaintiffs after filing her Report and Plan. For Advocate Commissioner report and plan call on or before 05.12.2025.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 17<sup>th</sup> day of November 2025.

Sd/M.Santhosam  
District Munsif,  
Sulur.

**List of witnesses and Documents on Petitioners side:-** - Nil

**List of witnesses on Respondent side :-** - Nil

**List of documents on Respondent side:-**

Document No.	Date	Document	Nature of Document
Ex.R.1	23.09.2025	FMB for S.F.No.748, Neelambur Village	Online download copy
Ex.R.2	24.05.1943	Sale deed	Certified copy
Ex.R.3	19.08.1970	Sale deed	Certified copy

Sd/M.Santhosam  
District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.5/2024 in  
O.S.No.31/2024  
Dated:17.11.2025  
DMC, Sulur