

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

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

**District Munsif, Sulur**

Thiruvalluvar year 2056 Visvavasu 24<sup>th</sup> day of Month of Purattasi

Friday the 10<sup>th</sup> day of October 2025

**I.A.No.2/2024**

**in**

**O.S.No.91/2024**

Miss. Rathna

**... Petitioner/Plaintiff**

**/VS/**

1. Vinoth

2. J. Grace Esther

3. K. Mallika

4. Krishnasamy

**... Respondents/Defendants**

This petition is coming on this day for final hearing before me in the presence of Mr.M.Muthukumar, Advocate for the Petitioner and Mr.S.Viswanthan, Advocate for the 1<sup>st</sup> Respondent and the 3<sup>rd</sup> and 4<sup>th</sup> Respondents are being called absent set exparte and the 2<sup>nd</sup> Respondent is exparte in main suit and upon perusing the records, and this court made the following:

**ORDER**

This petition filed by the petitioner under order 26 rule 9 and section 75 and 151 of CPC to appoint a learned member of the Bar as Advocate Commissioner to measure and make a Local Inspection of the petition mentioned property with the assistance of a Taluk Surveyor and file his report along with the plan and photos.

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

1.1. The Petitioner/Plaintiff have filed the main suit for Mandatory injunction. The approach road for the petition property is South to North Panchayath road with 18 feet wide from which turning to the Eastern side with 15 feet wide panchayath road which extends to 78 feet 8 inches in the East to West in the Northern side and 80 feet 8 inches I the East to West in the South side and directedly ends in the petition 'A' schedule property. At the ending point the width of the said road shortens to 11 feet. The FMB for S.F.No.677, Sular village, previously Palladam Taluk, presently Sular Taluk, issued by VAO, Sular Taluk, Adangal extract in petitioner name.

1.2. The 1<sup>st</sup> respondent is residing in the north west side of the said approach road detailed in the 'B' schedule property, the 2<sup>nd</sup> respondent is residing in the North East side of the said road detailed in the 'B' schedule property. The 3<sup>rd</sup> respondent is residing at the South West side of the said road and the 4<sup>th</sup> respondent is residing at South Eastern side of the said road detailed in the 'B' schedule property. The above respondents all jointly encroached the said approach road and constructed their compound wall. As a result presently the said approach road is now turned into a tiney lane, further damaging the 1<sup>st</sup> and 2<sup>nd</sup> respondents were releasing their wast water in the said road which causes much difficulty to petitioner during rainy days. Hence, the petitioner filed this petition. 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 application is false, frivolous, vexatious and unsustainable either on law or on facts. The 1<sup>st</sup> respondent/defendant is stranger of the suit property and he is not a owner of the property. The 1<sup>st</sup> respondent/defendant has no role in the suit property and he having no right in the property. Hence, the said suit is liable to be dismissed as mis-joinder of parties of necessary party. Without impleading the real owner of the property in north west side of the property mentioned in item No.2,

the petitioner/ plaintiff sought for the relief against the said property and file an application to appoint an Advocate Commissioner of the property is not maintainable. The said real owner of the property is necessary party to the proceedings and without impleading the real owner of the suit property.

2.2. No specific pleading that how much feet of the properties are encroached and also no pleading about that which defendants are encroached, how much extent of the property. The plaintiff filed the suit with vague manner without mention specific extent of the property encroached by the each defendants. To gather the evidence on the side of the petitioner/plaintiff, filing this application is not maintainable on this ground alone.

2.3. The petitioner/plaintiff is not mentioned anywhere in the application that how much extent of the property encroached by each of defendant's and also not mentioned that total extent of the property encroached by them by way of length and width. Now filing this application for vague manner is not maintainable and the said application is filed for measure the property to knowing the details on behalf of the plaintiff. The said facts is not permissible. Hence, the petition ought 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 and section 75 and 151 of CPC to appoint an 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 Mandatory injunction. The

main suit is pending for framing of issues. The Petitioner/plaintiff has filed this present petition to measure and make a Local Inspection of the petition mentioned property with the assistance of a Taluk Surveyor and file his report along with the plan and photos.

5.2. The Petitioner stated that, The 1<sup>st</sup> to 4<sup>th</sup> respondents jointly encroached the said approach road and constructed their compound wall. As a result presently the said approach road is now turned into a tiny lane, further damaging the 1<sup>st</sup> and 2<sup>nd</sup> respondents were releasing their waste water in the said road which causes much difficulty to petitioner during rainy days. The 1<sup>st</sup> respondent objected the same and stated that how much extent of the property encroached by each of defendant's and also not mentioned that total extent of the property encroached by them by way of length and width.

5.3. The original suit is filed for Mandatory injunction to directing the 5<sup>th</sup> to 7<sup>th</sup> defendants to take steps to demolish the illegal encroachments made by the 1<sup>st</sup> to 4<sup>th</sup> defendants in 'B' schedule suit property. The real dispute between the Petitioner/Plaintiff and 1<sup>st</sup> to 4<sup>th</sup> Respondents/defendants is whether there is any encroachment made by the 1<sup>st</sup> to 4<sup>th</sup> defendants in 'B' schedule property?. Hence, this suit is for Mandatory Injunction. Hence, to appoint an advocate commissioner this court come to the conclusion. In order to resolve the real dispute between the petitioner and the respondents, the above petition is allowed and ordered accordingly.

6. In the result, Mrs.N.Kavitha, (M.S.No.1098/2020), 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 measure the petition mentioned property with title deeds and Revenue records with the assistance of a Taluk Surveyor and file her report along with the plan and photos. Her 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 24.10.2025.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 10<sup>th</sup> day of October 2025.

Sd/M.Santhosham  
**District Munsif,**  
**Sulur.**

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

Nil

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

Nil

Sd/M.Santhosham  
**District Munsif,**  
**Sulur.**

Draft/ Fair Order  
I.A.No.2/2024 in  
O.S.No.91/2024  
Dated:10.10.2025  
DMC, Sulur