

IN THE COURT OF THE DISTRICT MUNSIF, SULUR**Present : Tmt.M.Santhosham., B.Sc., B.L.,****District Munsif, Sulur**Thiruvalluvar year 2057 Sri Parapava year, 21st day of AadiThursday the 6th day of August 2026**I.A.No. 5/2025****in****O.S.No. 132/2023**

G. Thangaraj

...Petitioner/Defendant

/ Vs /

1. N. Vijayakumari

2. Narayanasamy

3. N. Venkatesh

...Respondents/ Plaintiffs

This petition is coming on this day for final hearing before me in the presence of Mr.B.Jothikumar, Advocate for the Petitioner and Mrs.J.Dhivya, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDER

Petition filed by the petitioner under Order 26 Rule 9 and section 151 of CPC to to reappoint an experienced Advocate Commissioner and to report on record.

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The petitioner is the defendant in this suit O.S.No.132/2023. This Court appointed Advocate Commissioner in I.A No.3/2023 have arrived to S.F.No.364/1 & 2 in Irugur Village on 23rd September 2024, at around 3:30 p.m.,

accompanied by the Taluk Surveyor. At the same spot, petitioner, his counsel, plaintiffs and the plaintiffs' counsel were also present. Petitioner's counsel has instructed orally to measure the Schedule mentioned properties A and B also from the boundary stone to the respectful Commissioner. But the Plaintiffs' Counsel had argued to measure from the road of 20 feet which is on the eastern side of the suit property where there was no boundary stone and the Commissioner had also accepted the claim of Plaintiffs' Counsel.

1.2. The Commissioner had instructed the Surveyor to measure from the 20 feet eastern side road of the suit property. Though the surveyor already has measured multiple times from the time of controversy and aware of the irregular measurements, they have also acted arbitrarily at that time. During the measurement from the 20 feet eastern side road of the suit property, petitioner and his Counsel have objected the Commissioner and the Surveyor to measure from the boundary stone as the 20 feet road they started to measure was said to be an arbitrary measurement without the boundary stone. But there was no response from the Court appointed Commissioner where is he agreed with the plaintiffs' counsel who argued that their measurement was right.

1.3. During the measurement, 1st and 3rd plaintiffs were interrupting the surveyor by holding the measuring tapes in hand and the Commissioner was remained silent though petitioner's counsel requested for their non-intervention to the Commissioner. The Commissioner's statement on encroachment was soon after measuring the compound wall which is in Site No. 10. The same Surveyor had measured multiple times the suit property and confirmed the plaintiff's encroachment of nearly 2 feet to petitioner property but did not give me any records as a document, even though petitioner asked for a digital land record or other documents available. This eventually became a due advantage to the plaintiffs and

therefore the suit arose in this Court.

1.4. Petitioner have bought the western side property, the concrete house along with the 80 feet compound wall built in Site No. 10 of S.F.No.364/1 in the Irugur Village on 14.7.2008 as per the sale deed dated 14.7.2008 from the original owner only after the plaintiffs' Site.No.10 eastern side property, which was owned during 2004. The Commissioner was not aware of the fact that the Compound wall of 80 feet in Site.No.10 was constructed by the original owner before 2008. Therefore, petitioner bought the property along with the Compound wall which was already built by the original owner. Also, petitioner have constructed the wall roof along with the extension of about 1/2 feet to ensure the plaintiffs' 2 feet encroachment towards my property.

1.5. The court appointed Advocate Commissioner who arrived on 23.09.2024 was found arbitrary by not knowing the facts of the case, as Site No.10 property in S.F.No.364/1 in the Irugur village was bifurcated by the original owners and to ensure any encroachment the Site No.10 property should be measured as the whole from the boundary stone to ensure the accuracy along with the digital land survey records. Also, the respectful Commissioner did not record the event with any audio or video or took any photographs or measure from the boundary stone. Hence, to reappoint an experienced Advocate Commissioner who Reports with (i) digital measurement, (ii) proper land records and (iii) details of measuring from the boundary stones to note down the Schedule mentioned property. Hence, the petition is to be allowed.

2. The brief averments of Counter filed by the Respondents as follows:

2.1. The allegations in the affidavit filed in support of the petitioner are all false and incorrect. The petitioner is not entitled to the relief prayed for or to any

other relief. The respondents/plaintiffs have filed the above suit for mandatory injunction. The petitioner/defendant filed counter and argued in I.A.No.3/2024 which is filed by the respondents/plaintiffs with lot of authorities not to the measure the suit property. Finally that this Court ordered in I.A.No.3/2024 appointed the advocate commissioner to measure the property with Taluk Surveyor.

2.2. In the petitioner affidavit stated that property measured in 3.30 p.m. the both counsel's parties, surveyor, advocate commissioner all were mutually fixed the time and date and went. The petitioner/defendant argued with advocate commissioner and Taluk Surveyor while measuring the property. The petitioner/defendant took us road east side west side as his wish for search of boundary stone. The Taluk Surveyor conveys him that the suit property and the defendant property all were layout of house site. As per Taluk S.F. Plan book surveyor measured with lot of disturbance from the petitioner/defendant.

2.3. The petitioner/defendant doing lot of troubles to the respondents/plaintiffs. The 1st and 2nd respondents are senior citizens made them sit in police station using his wealth power and influence in his community, teasing them in road. The petitioner/defendant doing worst behavior against the respondents/plaintiffs. As per the order in I.A.No.3/24 the Taluk Surveyor measured site No.10 in S.F.No.346/1. As per the advocate commissioner's report and surveyor plan it was revealed that the the respondents/plaintiffs suit property 0.6 meter on the southern side. petitioner/defendant encroached.

2.4. The Petitioner/defendant could not able to change anything. Since he decided to file this application, he can use his men power, wealth to change anything. The above application filed to scrap the advocate commissioner petition and appointment of advocate commissioner to measure the property of the suit

properties itself clearly seen that the irrelevant and not necessary to decide fact in the issue of the suit. Hence this application is unnecessary one. This application filed having wrong intention of dragging the proceeding of the suit. There are absolutely no merits in this petition. Hence, the petition is to be dismissed.

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

4. Point for Consideration:-

Whether the petition under Order 26 Rule 9 and section 151 of CPC to to reappoint an experienced Advocate Commissioner and to report on record 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 Permanent injunction and Mandatory injunction. Now the suit is in the stage of trial.

5.2. The petitioner stated that, during the measurement, 1st and 3rd plaintiffs were interrupting the surveyor by holding the measuring tapes in hand and the Commissioner was remained silent though petitioner's counsel requested for their non-intervention to the Commissioner. The Commissioner's statement on encroachment was soon after measuring the compound wall which is in Site No. 10. The same Surveyor had measured multiple times the suit property and confirmed the plaintiff's encroachment of nearly 2 feet to petitioner property but did not give me any records as a document, even though petitioner asked for a digital land record or other documents available. This eventually became a due advantage to the plaintiffs

and therefore the suit arose in this Court.

5.3. The respondents objected that, the petitioner/defendant argued with advocate commissioner and Taluk Surveyor while measuring the property. The petitioner/defendant took us road east side west side as his wish for search of boundary stone. The Taluk Surveyor conveys him that the suit property and the defendant property all were layout of house site. As per Taluk S.F. Plan book surveyor measured with lot of disturbance from the petitioner/defendant. The petitioner/defendant doing lot of troubles to the respondents/plaintiffs.

5.4. On perusal of record, the respondents/plaintiffs filed petition under order 26 rule 9 of CPC in I.A.No.3/2023 and this court allowed to appoint an Advocate Commissioner and the Advocate Commissioner also filed his report and plan on 26.11.2024. On 10.01.2025 the defendant side filed this petition to reappointment of Advocate Commissioner to digital measurement, proper land records and details of measuring from the boundary stones to note down the schedule mentioned property. This court considered that, the commissioner report filed in I.A.No.3/2033 is not rejected and this court thinks to allow this petition to appoint another Advocate Commissioner. Hence, this court inclined to allow this petition.

6. In the result, this court appoint Mrs. M. Tamil Selvi, (MS.No.1158/2006) is appointed as Advocate Commissioner. The Advocate Commissioner also directed to issue notice to both parties and their counsels before visit the suit property and measure the petition mentioned property with the help of Taluk Surveyor and through DGPS and to note down the schedule mentioned property and file her report and plan. Her remuneration is fixed as Rs.10,000/- shall be paid by Petitioner/ Defendant after filing his Report and Plan. For Advocate

Commissioner report and plan call on on or before 27.08.2026.

Dictated to the Steno-typist and directly typed by her in computer,
corrected and pronounced by me in open court this the 6th day of August 2026.

**District Munsif,
Sulur.**

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

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

**District Munsif,
Sulur.**

Draft/ Fair Order

I.A.No. 5/2025 in

O.S.No.132/2023

Dated:06.08.2026

DMC, Sulur