

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Thiruvalluvar year 2056 Visvavasu year, 26th day of Month of Aippasi

Wednesday the 12th day of November 2025

I.A. No.12/2025

in

O.S. No.195/2017

1. N. Senthilkumar

2. Kalaiselvi

...Petitioners/ 1st and 5th Defendants

//Vs//

1. S. Vijayalakshmi

2. S. Banumathi

Rep by Power Agent

K.Subramaniam

...Respondents / Plaintiffs

This petition coming for final hearing before me in the presence of Mr.M.Ganeshkumar, Advocate for the Petitioners and Mr.S.Jegadesan, Advocate for the Respondents and upon perusing the records, this court made the following:

ORDER

This petition filed by the Petitioners under order 26 Rule 9 and Section 151 of CPC to appoint an advocate commissioner to note down the adjacent properties to suit properties by taking photographs and measuring the entire adjacent properties especially the properties belonging to the respondents, respondents' father, the defendants and recording the position of the nilavial oodai in the field.

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

1.1. The respondents have filed the above suit for mandatory injunction alleging that petitioner have encroached upon the suit properties. The suit properties are part and parcel of our ancestor's properties for around hundred years. Between

the respondent's properties and petitioners properties there has been a Niluviyal oodai that has been present since ages that served as boundary between us. In the north of suit property there exists a 100 year old RR masonry building, another brickwork structure, a well with electricity connection all belonging to petitioners. However the plaintiff has claimed that the suit property is in the south of the land belonging to the plaintiffs' father, further the coconut trees in the suit property are planted miscible with the coconut trees planted in the lands in the north, south and east belonging to us.

1.2. Petitioner's have come to know that after filing the above suit, the respondents have manipulated revenue records and the FMB sketch. The position of the Nilivuvilal oddal that marks the boundary between both parties has been shifted towards east in the new sketch. However the position of the Nilivuvilal oddai is entirely different in the field. In order ascertain the exact suit property and coming to a just conclusion it is necessary to measure the adjacent properties of suit property especially the land belonging to the plaintiffs and defendants and also record the physical features of the adjacent properties by taking photographs.

1.3. Though a previous commissioner was appointed in I.A.No.1633 of 2016 in the above suit, the commissioner utterly failed to execute the warrant to "note down the physical features of the suit properties and "adjacent properties". The commissioner's report is confined to schedule B properties alone. Even during the cross examination, the commissioner admitted that only suit properties were measured and the physical features of the adjacent properties were not recorded. The above said physical features, structures and well of the adjacent properties are the boundaries mentioned in the documents of the plaintiffs and the defendants.

1.4. The respondents are attempting to make illegal gains by fraudulently manipulating revenue records. Noting down the adjacent properties to suit properties and measuring the entire adjacent properties especially the properties

belonging to the respondents, respondents' father and the defendants shall help this Court come to a just conclusion to ascertain if at all there is any encroachment by these petitioners.

1.5. Under the above said circumstance it is just and necessary that an advocate commissioner has to be appointed to note down the adjacent properties to suit properties by taking photographs and measuring the entire adjacent properties especially the properties belonging to the respondents, respondents' father and the defendants and recording the position of the niluvial oodai in the field. Unless this petition is allowed Petitioner's shall be put to irreparable loss and hardship. Hence this petition is to be allowed.

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

2.1. The petition is false, frivolous and not sustainable both under law and fact of the case and put the petitioners to strict proof of the same. Petition as its framed is not at all maintainable the prayer sought is not in accordance with provisions under order 26 rule 9 of C.P.C and liable to be dismissed in limini. These petitioners do not have any locustandi to file this present application. This petition has been filed by the petitioners to appointment of commissioner to for noting the physical features at this stage is at gathering of evidence. From the averments of the affidavit is very clear that the petitioners are seeking appointment of commissioner to note down the physical features of adjacent properties to suit properties by taking photographs and measuring the entire adjacent properties especially the properties belonging to the respondents, respondent's father, and the defendants recording the position of niluvial oodai in the field is totally against the provisions of order 26 rule 9 of C.P.C and it is well settled law that a commission cannot be appointed to note down the physical features of the properties which are not the subject matter of the suit and same cannot be allowed at this stage.

2.2. The commissioner has visited the suit property and filed her report and same has been marked through commissioner and commissioner also examined by the defendant and at this juncture the above captioned application has been filed only to fill up the lacuna on the side of the defendant and same cannot be allowed. Petitioner/Defendant herein has not filed any objection to the commission report and as such they are not entitled to file fresh application for appointment of commission with the intention to gather evidence and same is not permissible under law. The earlier commissioner has duly complied the scope of the warrant of this court, and same has been marked as exhibit before this Honorable court. The earlier commissioner report has clearly established the encroachment made by the defendant in the suit. Under these circumstances the present application is only aimed to drag on the proceedings.

2.3. The issue framed by this court can only be decided by conducting trial and adducing evidence and it cannot be decided by appointment of commission as alleged by the petitioner/Defendant. 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 and Section 151 of CPC to appoint an advocate commissioner to note down the adjacent properties to suit properties and recording the position of the niluvial oodai in the field 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 Mandatory injunction and now suit is currently pending for defendants side evidence.

5.2. The petitioners/ 1st and 5th defendants stated that, the petitioner's have come to know that after filing the above suit, the respondents have manipulated revenue records and the FMB sketch. The position of the Nilivuvilal oddal that marks the boundary between both parties has been shifted towards east in the new sketch. However the position of the Nilivuvilal oddai is entirely different in the field. In order ascertain the exact suit property and coming to a just conclusion it is necessary to measure the adjacent properties of suit property especially the land belonging to the plaintiffs and defendants and also record the physical features of the adjacent properties by taking photographs.

5.3. The Respondents/Plaintiffs objected that, the commissioner has visited the suit property and filed her report and same has been marked through commissioner and commissioner also examined by the defendant and at this juncture the above captioned application has been filed only to fill up the lacuna on the side of the defendant and same cannot be allowed. Petitioner/Defendant herein has not filed any objection to the commission report and as such they are not entitled to file fresh application for appointment of commission with the intention to gather evidence and same is not permissible under law. ***The Respondents/plaintiffs side filed authority "CDJ 2008 MHC 5156 of Honourable Madras High Court Judgment"***

5.4. The original suit already Advocate Commissioner appointed and Advocate commissioner has visited the suit property and filed her report and plan on 05.12.2017. The report and plan has been marked through commissioner and commissioner also examined by the defendants. The plaintiffs and the defendants were not filed their objection for Advocate Commissioner report and plant. The earlier commissioner report has clearly established the encroachment made by the

defendant in the suit. Under these circumstances the present application is only aimed to drag on the proceedings. This petition has been filed by the petitioners to appointment of commissioner to noting the physical features at this stage is at gathering of evidence. Hence, this petition is not maintainable. Hence after 7 years the petitioners/ 1st and 5th defendants filed this petition to appoint an advocate commissioner to note down the adjacent properties to suit properties by taking photographs and measuring the entire adjacent properties especially the properties belonging to the respondents, respondents' father, the defendants and recording the position of the nilavial oodai in the field is not acceptable one. Hence, a commission can't be appointed to note down the physical features of the properties which are not the subject matter of the suit and same can't be allowed at this stage.

In the result, this petition is dismissed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 12th day of November 2025.

Sd/M.Santhosham
District Munsif,
Sulur.

List of witnesses and document on Petitioners side: - Nil

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

Sd/M.Santhosham
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.12/2025 in
O.S.No.195/2017
Dated : 12.11.2025
DMC, Sulur.