

**THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate, Annur.

On this Monday, the 24th day of November, 2025.

I.A.No. 3/2024

in

O.S.No. 273/2023

(CNR.No.TNCB21-001264-2023)

P.Murugasan

.... Petitioner/Plaintiff

//Versus//

1. R.Kamaraj

2. S.Durai

3. S.Dharmalingam

.... Respondents/Defendants

This petition is coming on today for final hearing before this court in the presence of Thiru.S.Balasubramanian, Learned Counsel for the Petitioner/Plaintiff and Thiru.K.Tamil Uravon Senthilarasan, Learned Counsel for the 1st and 2nd Respondents/Defendants, the 3rd respondent remained exparte and upon perusal of material records and having stood over for consideration till this date, this court passed the following:

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order 26 Rule 9 of CPC to appoint a Court commissioner to survey the suit property land of the plaintiff and demarcate the boundaries with the assistance of Taluk Surveyor and direct the commissioner to submit detailed report with the survey sketch and thus render justice.

2. Brief averments in the Affidavit:

a. The petitioner is the plaintiff filed the present suit for permanent and mandatory injunction relief against the respondent / defendant. Originally the sisters Nallammal and Ramakkal allotted to 2.42 acres and 2.18 acres in SF No. 98/3 of Masagoundanchettipalayam Village in 4.60 acres vide partition deed in Doc. No. 1440/1938. The elder sister Nallammal died by leaving behind her husband and two sons and among them, her husband and younger son executed a settlement deed dated 25.05.1967 in favour of two minor sons of the younger son Rangasamy vide Doc. No. 643/1967. Thus, the 1st respondent / 1st defendant and his deceased brother acquired 2.07½ acres of Nallammal. Later, vide partition Doc. No.267/1970, the Chinnarayappan, Ramasamy Chettiar and Rangasamy – respectively the two sons of Nallammal along with two minor sons of Rangasamy partitioned the properties, through which Ramsamy acquired 1.73½ acres in SF No.98/3. The 1st respondent, his deceased elder brother Shanmugam entitled for 0.68½ acre in SF No. 98/3 as ‘C’ Schedule property along with 0.85 acre in SF No. 98/2 of Masagoundanchettipalayam Village.

b. The above said Ramasamy sold that 1.73½ acre to father of the petitioner, Ramasamy’s brother in law, vide sale deed in Doc. No. 950/1971 dated 25.08.1971. After the petitioner’s father’s death on 01.09.1995, the petitioner, his mother, his sister entered into partition on 04.10.1995 vide Doc. No. 2009/1995 and by which the

petitioner derived 2.82 ½ acres out of 4.60 in SF No. 98/3. To the north of petitioner's property in SF No. 98/3, as per 1967 settlement deed 1.60 acres in SF No. 98/2 remained and out of which 0.85 acres owned by the 1st respondent and his brother; after deducting their share, 0.75 acre owned by Nanjappa Chettiar and Periyanna Chettiar misrepresented as 0.80 acres and sold it vide sale deed number 32/1976 to Rangasamy, father of the 1st respondent and deceased Shanmugam. The 2nd respondent acquired that property from his deceased father Shanmugam. The suit property under absolute possession and enjoyment of the petitioner, joint Patta 2526 issued for total land of 4.58 acre under the name of petitioner, respondents 1 to 3. The efforts of the petitioner for subdivision was objected by the respondents and so the present suit.

c. The 3rd respondent entitled to 1.09 acre in SF No. 98/3 through one half of his mother Thulasiammal's share, the remaining half share inherited by Rangammal, his elder sister. This property was inherited through Ramakkal, who was entitled to 2.18 acre. On 18.07.2022, the petitioner vide challan number 20220718004127, paid Rs.2,000/- for subdivision of the petitioner's land in SF No.98/3 but it was objected by the respondents 1, 2, though they don't have any right in it. A presuit notice was sent on 23.03.2023 to the respondents, they received but not replied, still restraining survey officials for subdivision. One agricultural service connection was received by the petitioner, he spend Rs.3,00,000/- on 17.06.2022 for digging a bore well, which is situated within 15 meters away from the Southern boundary of the respondents 1, 2.

On 04.09.2023, the petitioner purchased submersible motor for Rs. 67,000/- and when the fitter tried to install the motor in bore well, on the 1st week of November, the respondents resisted for it by stating the pendency of the suit. The complaint of the petitioner before the Annur Police Station was denied due to suit's pendency. Even though the bore well located within the petitioner's land in 1.09 acres of the petitioner, the respondents wantonly obstructing to use it. Hence, it is necessary that immediately the suit property has to be measured, demarcated by the boundary stone by an advocate commissioner with the aid of Taluk Surveyor unless despite spending huge amount more than 4,00,000/-, the petitioner would not able to irrigate the land. Hence, the present petition for appointment of a court commissioner to survey the suit property and demarcate the boundary with the assistance of Taluk Surveyor to file detailed report along with the sketch.

3. Brief averments in the Counter statement filed by the Respondent:

a. The respondent 1, 2 filed a memo to treat the averments of the written statement. This gist of the written statement treated as counter is as follows. The partition of properties by Nallammal and Ramakkal, after the demise of Nallammal properties acquired by her legal heirs as pleaded by the petitioner, the execution of subsequent settlement deed dated 25.09.1967, are admitted by the respondents 1, 2. But the later partition deed in Doc. No. 267/1970 dated 23.03.1970 and its partition, the sale of properties by Ramasamy to Palaniyappan vide Doc. No. 950/1971 dated 25.08.1971, the other facts related to partition of properties belonged to Ramakkal

and subsequent transfer of the equal share – 1.09 acres to the 3rd respondent are to be proved by the petitioner. Further, the fact about settlement deed 643/1967 and the transfer of 0.68 ½ acre in SF No. 98/3, purchasing the properties vide Doc. Nos.950/1971, 282/1977; the relationship of Palaniyappan and Kulanthai Chettiar and execution of partition deed in Doc. No. 267/1970, execution of partition deed dated 04.10.1995 vide Doc. No. 2009/1995 are also need to be proved by the petitioner. The grant of Patta No. 2526 for SF No.98/3 under the name of petitioner, respondents 1 to 3 alone admitted. The averments related to remaining extent of SF No.98/3 only as 0.75 acre for the respondents 1, 2 but mistakenly purchased 0.80 acre in excess of 5 cent is denied.

b. Chinnarayappa Chettiar, the grand father of the 1st respondent and Rangasamy, the grand father of 2nd respondent vide settlement deed in 643/1967 settled 2.42 acre in SF No.98/3, 0.80 acre in SF No.98/2 and 0.93 acre in SF No.92/3 were settled in favour of 1st respondent and the deceased Shanmugam to the total extent of 4.15 acres along with half share in house situated at Natham. Till date the respondents 1, 2 enjoyed those properties based on the document. The petitioner denied the total extent belonged to the respondents 1,2 and also denied the pathway access to the 3rd respondent, denied the validity of the settlement deed in 643/1967. Then only the respondents 1, 2 came to know about the execution of partition deed in Doc. No. 267/1970 dated 23.03.1970 and in which only 0.68 ½ acre was given to the 1st respondent and deceased Shanmugam by deceiving them and additionally gave

0.85 acre in SF No.98/2 vide 'C' Schedule. Thereby the mother of the 1st respondent, deceased Shanmugam was deceived to obtain 0.12 ½ acre belonged to the respondent 1, his deceased brother. After providing the property in favour of the minors, the later partition and allocation of property in favour of Ramasamy is invalid. When it was pleaded to the petitioner and request for partition of properties to set right the lessor 0.12 ½ cents, it was denied by the petitioner and also he denied to provide pathway access to the 3rd respondent. Hence, the respondents 1, 2 requested to dismiss the petition.

4. Neither party has examined any witnesses nor exhibited any documents.

5. Points for Consideration:

Whether this petition under Order 26 Rule 9 of CPC should be allowed and the petitioner is entitled to the relief of appointment of an advocate commissioner along with the help of Taluk Surveyor as prayed for?

Discussions and Decision:-

6. Both sides counsels' heard and the case records perused. The present suit was filed for the relief of permanent injunction as well as the mandatory injunction against the respondents / defendants. The present petition was filed for the relief of appointment of an advocate commissioner in order to ascertain the availability of bore well dug up by the petitioner within his property. The main contention of the

petitioner for requesting appointment of an advocate commissioner in the suit for injunction is that the petitioner dug up bore well within 15 meters from the Southern boundary, but the respondent denied and obstructed him to install the motor in the bore well by denoting the pendency of the suit.

7. The respondents filed a memo to treat the written statement as counter to the petition. Even during submission of the enquiry, the respondents never contended anything specific about the availability of bore well within the properties of the respondents but only claimed the counter averments related to the extent of properties that was altered between 1967 partition and 1970 partition, which was initially settled in favour of the 1st respondent and his deceased brother Shanmugam. The respondents never claimed that the bore well was dug up in their property and also they never denied or obstruction made by the respondents 1, 2 as pleaded by the petitioner. From the submissions made by both sides counsels', as well as the averments placed in the petition and counter, it is found that there exists a difference of opinion regarding the availability of bore well dug up by the petitioner / plaintiff that whether it is situated within the property belonged to him. Since the respondents not objected to the claim of the petitioner that bore well dug up is within the petitioner's property and a petition for interim injunction is pending, in order to determine the prayer of the petitioner / plaintiff that the respondents shall not cause disturbance for using the bore well in the undivided / not subdivided property, it is necessary to determine the position of bore well in the suit property. Hence, this court finds that the prayer of the

petitioner that appointment of a court commissioner to determine the interim application for temporary injunction and for permitting the petitioner to irrigate the suit property, it is necessary to survey the suit property for determining the alignment and position of bore well. In the result, this petition is allowed and advocate Mrs. Vijayakumari is appointed as an advocate commissioner, she is directed to visit the suit property along with Taluk Surveyor to survey and note down the physical features, availability and location of bore well and to file a detailed report. The advocate commissioner fee is fixed as Rs.15,000/-, which has to be directly paid by the petitioner. For advocate commissioner report call on 19.12.2025.

Dictated to the steno-typist, directly typed by her in the official desktop, corrected and pronounced by me in the open court on this 24th day of November, 2025.

Sd/- V.Monika
District Munsif cum Judicial Magistrate,
Annur.

Both side Exhibits marked: - NIL -

Sd/- V.Monika
District Munsif cum Judicial Magistrate,
Annur.

Draft/Fair Order

I.A. No. 3/2024 in

O.S. No. 273/2023.

Dated :24.11.2025.

DM cum JM, Annur.

**THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
ANNUR.**

PRESENT: Tmt.V.Monika, B.A., B.L., L.L.M.,
District Munsif cum Judicial Magistrate, Annur.

On this Monday, the 24th day of November, 2025.

I.A.No. 3/2024
in
O.S.No. 273/2023
(CNR.No.TNCB21-001264-2023)

P.Murugasan (51), S/o. Palaniappan,
Thavai thottam, Oraikalpalayam,
Masagoundenchettyalayam Village,
Annur Taluk, Coimbatore District.

.... Petitioner/Plaintiff

//Versus//

1. R.Kamaraj (58), S/o. Rangasamychettiyar,
D.No.10/379, Oraikalpalayam, S.S.Kulam Via, Coimbatore – 107.
2. S.Durai (30), S/o. Late. Shanmuam,
D.No.5/121E, Balaji Nagar, Kembanaickenpalayam,
Karaegoundenpalayam Village (PO), Coimbatore – 107.
3. S.Dharmalingam (55), S/o. Late.Sivaraman,
D.No.4/175, Ganesapuram, Kattampatty Village,
Sarkkarsamakulam Via, Annur Taluk, Coimbatore – 107.

.... Respondents/Defendant

This petition has been filed by the Petitioner/Plaintiff under Order 26 Rule 9 of
CPC to appoint a Court commissioner to survey the suit property land of the plaintiff

and demarcate the boundaries with the assistance of Taluk Surveyor and direct the commissioner to submit detailed report with the survey sketch and thus render justice.

Date of petition : 14.12.2023.

This petition is coming on today for final hearing before this court in the presence of Thiru.S.Balasubramanian, Learned Counsel for the Petitioner/Plaintiff and Thiru.K.Tamil Uravon Senthilarasan, Learned Counsel for the 1st and 2nd Respondents/Defendants, the 3rd respondent remained exparte and upon perusal of material records and having stood over for consideration till this date, and this court doth order and final order as follows:

- i) this petition is allowed and advocate Mrs. Vijayakumari is appointed as an advocate commissioner, she is directed to visit the suit property along with Taluk Surveyor to survey and note down the physical features, availability and location of bore well and to file a detailed report. The advocate commissioner fee is fixed as Rs.15,000/-, which has to be directly paid by the petitioner. For advocate commissioner report call on 19.12.2025.

Memo of Cost

- Both side cost list not filed -

Description of Property

கோயமுத்துார் ரி.டி., அன்னூர் சப் ரிடி, அவிநாசி வட்டம் (தற்போது அன்னூர் வட்டம்) மசக்கவுண்டன் செட்டிபாளையம் கிராமம் க.ச.98/3 நெ.பு.ஏ. 4.60. இதில் கிழபுறமாக தென்புரத்தில் பெரியண்ண செட்டியார் வகையறா பாக பூமிக்கு கிழக்கு.,

சண்முகம் வகையறா பாக பூமிக்கு தெற்கு., தென்வடல் ரோட்டுக்கு மேற்கு., பெரியண்ண செட்டியார் வகையறா பூமிக்கு வடக்கு இதன் மத்தியில் ஏக்கர் 1.73 ½ க்கு க.ச. 98/3 நெ.பு.ஏ. 4.60க்கு தீ.ரூ.3.75 இதில் மேல்புரமாக தென்புரத்தில் துளசியம்மாள் பாக பூமிக்கு தெற்கு., ம.இராமஞ்செட்டியார் பூமிக்கு கிழக்கும், வடக்கும்., மேலே காணும் ஏக்.1.73 ½ பூமிக்கு மேற்கு இதன் மத்தியில் ஏக்கர் 1.09.

மேற்படி க.ச.98/3 நெ.பு.ஏ.4.60ல் ஒட்டு ஏக்கர் (1.73½ +1.09) 2.82½ ஆக உள்ளது. இதன் பேரில் கூட்டாக வாதி மற்றும் 1 முதல் 3 பிரதிவாதிகளின் பெயர்களில் தாக்கலாகி உள்ள பட்டா எண் 2526 ஆகும். அதன்படி ஹெ.1.85.50க்கு ஏக்கர் 4.58 ஆக உள்ளது. மேற்படி பட்டா இத்தாவா 10ம் ஆவணமாகும்.

Given under my hand and the seal of this court, this the 24th day of November, 2025.

Sd/- V.Monika
District Munsif cum Judicial Magistrate,
Annur.

Final Order in :
I.A. No. 3/2024 in
O.S. No. 273/2023.
Dated :24.11.2025.
DM cum JM, Annur.