

**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 Thursday, the 12th day of June, 2025.

I.A.No. 3/2023
in
O.S.No.325/2023
(CNR.No. TNCB21-001599-2023)

1. Kaliappan

2. Subramaniam

.... Petitioners/Plaintiffs

//Versus//

1. Karuppathal

2. Maheshwari

3. Karthi

4. Thamizhselvi

5. Palaniammal

6. Sanmugam

7. Balasubramaniam

8. Palaniammal

9. Gowsalya

10. Muthusamy

.... Respondents/Defendants

This petition came for final hearing before this court in the presence of the learned Advocate Tmt.A.Sharmila, Counsel for the Petitioners/Plaintiffs and the learned Advocate Thiru.M.Gobalakrishnan, Counsel for the Respondents/Defendants and upon perusing of material records and having stood over for consideration till this date, this court delivered the following :

ORDER

This petition has been filed by the petitioner under Order 26 Rule 9, 10 & 151 of CPC to appoint an advocate/commissioner to inspect the suit property, note down the physical features of the cart track and pathway in adjacent lands and to submit a detailed report with plan and photographs and render justice.

2. Brief averments in the Affidavit:

The petitioners and the other respondents except the 4th are relatives. The disputed property is a 760-foot-long, 18-foot-wide public cart track located to the east and south of their lands, used by them and the public for over 50 years without obstruction. This access is the only route to their agricultural and commercial lands, as clearly mentioned in multiple registered documents belonging to both plaintiffs and the defendants. On 16.05.2023, the defendants placed stones on the cart track and threatened to erect fence, blocking access. Multiple attempts to resolve the matter through a local panchayat were failed and so the petitioners filed the case. The petitioners are therefore forced to approach the court. Hence, the petitioners request for the appointment of an Advocate Commissioner, assisted by the Annur Taluk Surveyor, to inspect the property, note down its features and nature of the cart track and to file report accordingly.

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

The respondents submits that the petition filed by the petitioner is false, baseless, and legally unsustainable. Except for facts specifically admitted herein, all

other allegations made in the petition are denied and are subject to strict proof. While the respondents admitted that their property lies to the south of the petitioner's land, they categorically deny the existence of any common cart track as alleged. It is stated that the petitioners have deliberately included a recital regarding existence of a cart track in their sale deed despite the fact that no such track exists in the revenue records or parent title documents. The respondents further contends that the petitioners, being influential individuals, attempted to coerce the respondent into selling their property, and upon refusal, have instituted the present petition with malafide and ulterior motives. The respondent asserts that the property in question is ancestral and legally owned and that the alleged cart track is a fabricated claim. It is further submitted that the appointment of a Commissioner is unwarranted, as there are no evidence as to possession or usage of the said track shown by the petitioners. Appointment of the advocate commissioner would delay the proceedings and it will become an attempt to gather evidence. The petition has been filed to harass the respondents and to unlawfully gain over the respondent's land. Therefore, it is respectfully prayed that the Hon'ble Court dismiss the petition with costs, as it is devoid of merits.

4. Neither party examined any witness and exhibited documents.

5. Points for Consideration:

Whether the petition filed under order 26 rule 9 of C.P.C. should be allowed and the petitioner/plaintiff is entitled to the relief of appointment of an advocate commissioner as prayed for?

6. Discussion

Both sides heard and the case records perused. The main suit is filed by the petitioners/plaintiffs against the respondents/defendants for the reliefs of permanent injunction and mandatory injunction with regard to the common pathway described in suit A scheduled property. The petitioners and the respondents were having the lands adjoining to one another. As per the contention of the petitioner/plaintiffs, on the eastern side of their property there exists a common pathway for the 760 feet length and 18 feet width, which is the suit property. Both side parties never exhibited any documents on their side in this interlocutory application. But for the purpose of attaining a proper decision, this court perused the documents submitted by the petitioners/plaintiffs along with the plaint. The sale deed stands in favour of the 1st and 2nd plaintiff and the parent sale deed to the 2nd plaintiff were produced along with the plaint at the time of filing the suit. In the sale deed pertaining to the 2nd plaintiff it had the recital as "மேற்படி பூமிக்கு கிழமேல் பஞ்சாயத்து ரோட்டிலிருந்து தென்வடலாக வரும் மாமூல் பொது வண்டித்தடத்தில் நீங்களும் வண்டி வகையறா ஓட்டி நடந்து கொள்ளும் தடபாத்தியமும்". Further the parent deed to the second plaintiff in document number 104/1974 had the recital as "கிழமேல் பஞ்சாயத்து ரோட்டில் இருந்து மேற்படி பூமி வரை தென்வடலாக மாமூலாக வரும் வண்டி கால் நடை தட பாத்தியம் மற்ற மர வகைகள் சகிதம்."

Apart from the above two recitals, none other documents shows that there existed such pathway as claimed by the petitioners. Furthermore, the above two recitals too never shows that the extent of the pathway is about 760 feet length and 18 feet width. In one of the document "1974" the four boundaries shows that the property is situated to the west of the North-South Pathway. The petitioners are claiming one relief of mandatory injunction against the respondents for removal of the stones grounded in centre of the pathway by the respondents. Eventhough there is no recital about extent of the pathway in the documents but there are recitals about some pathway access to the plaintiff. Thus, in order to ascertain proper decision by the court after the trial regarding the relief of mandatory injunction claimed, it is just and necessary to satisfy about any placement of stones in the pathway access likely to interfere with the passage of the petitioners/plaintiffs through the pathway.

In the light of the above discussions, this court hereby allows the petition and appoints Advocate Ms. Vijayakumari, as an advocate commissioner and she is directed to visit the suit property, note down all the physical features of the petition mentioned properties, the pathway access available to the suit properties belonged to the petitioners/plaintiffs and to note down any such stones were laid down in the pathway access along with the help of the Taluk Surveyor. The Advocate Commissioner fee is fixed as Rs.12,000/- and the same has to be paid by the petitioners/plaintiffs directly to the Advocate Commissioner. For Advocate Commissioner plan and report by 29.07.2025.

Typed by me in my official laptop, corrected by and pronounced by me in the open court on this 12th day of June, 2025.

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

Petitioner side Exhibits : - NIL -

Respondents side Exhibits :- - NIL -

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

Draft / Fair Order

I.A. No. 3/2023 in

O.S. No. 325/2023

Dated : 12.06.2025

DM cum JM, Annur.

**IN 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 Thursday, the 12th day of June, 2025.

I.A.No.3/2023
in
O.S.No.325/2023
(CNR.No. TNCB21-001599-2023)

1. Kaliappan(58), S/o.Ramasamy,
D.No.14. Uripallam Puthur, Pooluwapatti (PO), Pooluwapatti, Coimbatore.
2. Subramaniam
Kapramaniam (65), S/o.Pemurugaswamy,
D.No.41/46. Panathoppumayil, Kunnathurampalayam,
Nagammapputhur PO, Annur, Coimbatore. Petitioners/Plaintiffs

//Versus//

1. Karuppathal (53), W/o.Natarajan @ Palaniswami,
Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.
2. Maheshwari (42), W/o Vishwanathan,
Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.
3. Karthi (38) S/o. Nadarajan @ Palanisamy,
Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.
4. Thamizhselvi (55), W/o. Jeganathan,
Nagammapputhur(PO), Annur - 641 653.
5. Palaniammal (70), W/o. Palanichamy @ Duraisamy,

Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

6. Sanmugam (46) S/o.Palanichamy @ Duraisamy,
Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

7. Balasubramaniam (42), S/o. Palanichamy @ Duraisamy,
Koothandavar Temple Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

8. Palaniammal W/o.Rengasamy,
Thenvadal Street, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

9. Gowsalya (45) W/o. Palanichamy,
Thenvadal Street, , Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

10. Muthusamy (50), S/o.Late.Kandasamy,
Avinasi Main Road, Kunnathurampalayam,
Nagammapputhur(PO), Annur - 641 653.

.... Respondents/Defendants

This petition has been filed by the petitioner under Order 26 Rule 9, 10 & 151 of CPC to appoint an advocate/commissioner to inspect the suit property, the cart pathway, and pathway in adjacent lands and to submit a detailed report with plan and photographs and render justice.

Date of petition : 19.06.2023.

This petition came for final hearing before this court in the presence of the learned Advocate Tmt.A.Sharmila, Counsel for the Petitioners/Plaintiffs and the learned Advocate Thiru.M.Gobalakrishnan, Counsel for the Respondents/Defendants 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:

Advocate Ms. Vijayakumari, as an advocate commissioner and she is directed to visit the suit property, note down all the physical features of the petition mentioned properties, the pathway access available to the suit properties belonged to the petitioners/plaintiffs and to note down any such stones were laid down in the pathway access along with the help of the Taluk Surveyor. The Advocate Commissioner fee is fixed as Rs.12,000/- and the same has to be paid by the petitioners/plaintiffs directly to the Advocate Commissioner. For Advocate Commissioner plan and report by 29.07.2025.

Memo of Cost

- Both side cost list not filed -

Description of Property

அயிட்டம் - I :

கோயமுத்தூர் பதிவு மாவட்டம், அண்ணூர் சார் பதிவு மாவட்டம், அண்ணூர் வட்டம், அண்ணூர் கிராமம், க.ச.528 நெ.பு.ஏ.8.54 இதில் பட்டா எண்1001-ல் தாக்கலாகியுள்ளபடியும் தற்கால சப்டிவிசன்படியும் க.ச.528/4A நெ.பு.ஏ.0.91½ (பு ஹெ.0.37.00) தீர்வை ரூ.0.74 இந்த விஸ்தீரணமுள்ள பூமி பூராவும் மேற்படி பூமிக்கு போக வர உண்டான மாமூல் தடபாத்தியங்கள் வகையறா சகிதம் மேற்படி காலையில் இனி எனக்கு பங்கோ,பாத்தியமோ உரிமையோ எதுவும் இல்லை.

இதிலிருந்து

தென் வடலாக - 760 அடி நீளம்,
18அடி அகலம்

மேற்படி பூமி அண்ணூர் பேரூராட்சிக்கு உட்பட்டது.

இந்த சொத்தில் கிழபுறமாக தென்வடலாக அமைந்துள்ள 760 அடி நீளமும், கிழமேலாக 18 அடி அகலமும் உள்ள பொது வண்டிபாதை தான் தாவா சொத்தாகும். மேற்படி தாவா சொத்து கோவை மாவட்டம், அண்ணூர் வட்டம், அண்ணூர் கிராமத்தில் சர்வே நம்பர் 528-ல் அமைந்துள்ளது.

அயிட்டம் - II

கோயமுத்தூர் ரிடி அண்ணூர் சப்ரிடி, அவினாசி வட்டம், அண்ணூர் கிராமம் க.ச.528 நெ.காலையில் எனக்கு கிரையப்படி பாத்தியப்பட்டு பூமியை நானும் எனது பங்காலிகளும் வாய்மொழியாக பாகம் பிரித்துக் கொண்டு, அதன்படி எனது அனுபவ சுவாதீனத்தில் இருந்து வருவதும் நில உடைமை மேம்பாட்டு திட்டத்தின் கீழ் எனது பெயரில் தனி சப்டிவிசன் ஏற்பட்டு, எனது அனுபவ சுவாதீனத்தில் இருந்து வரும் கீழ்காணும் பூமிக்கு செக்குபந்தி விபரம்

க.ச.528/4ஏ, நெ, காலையில் சுப்பிரமணியம் வகையறா பூமிக்கும் தெற்கு க.ச.521 நெ. காலைக்கும் கிழக்கு க.ச. 528/4சி நெ. காலையில் கந்தசாமி வகையறா பூமிக்கும் வடக்கு தென்வடல் பொது வழிதடத்துக்கும் மேற்கு இதன் மத்தியில் ஏ 0.87, ½ சென்ட் பூமி பூராவும் மேற்படி பூமி சப்டிவிசன் படி க.ச.528/4பி நெ.பு.ஹை 0.35.5 க்கு ரூ.0.71 என உள்ளது. மேற்படி பூமிக்கு கிழமேல் பஞ்சாயத்து ரோட்டிலிருந்து தென்வடலாக வரும் மாமூல் பொது வண்டித்தடத்தில் நீங்களும் வண்டி வகையறா ஓட்டி நடந்து

கொள்ளும் தடபாத்தியமும் கிரையச் சொத்து அண்ணூர் சிறப்பு நிலை சிற்றாராட்சிக்கு உட்பட்டது.

இந்த சொத்தில் கிழபுறமாக தென்வடலாக அமைந்துள்ள 760 அடி நீளமும், கிழமேலாக 18 அடி அகலமும் உள்ள பொது வண்டிப் பாதை தான் தாவா சொத்தாகும். மேற்படி தாவா சொத்து கோவை மாவட்டம், அண்ணூர் வட்டம், அண்ணூர் கிராமத்தில் சர்வே நம்பர் 528-ல் அமைந்துள்ளது.

Given under my hand and the seal of this court, this the 12th day of June, 2025.

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

Final Order in :
I.A.3/2023 in
O.S.325/2025
Dated : 12.06.2025
DM cum JM, Annur.