

**IN THE COURT OF ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM**

Present:Tmt.E.Swetha, B.B.A., L.L.B (Hons)
Additional District Munsif
Chidambaram.

Thursday, the 14th day of August 2025

I.A.No.145/2025

in

O.S.No.332/2008

1. Ramadoss (died)
2. Giri
3. Punitha

.... Petitioners/ Plaintiffs

/Vs/

Ponnambalasamy mutt
@ KCT Madalayam
represented by its Madathipathi
[

.... Respondent/ Defendant

This petition is coming on 1.8.2025 for final hearing before me in the presence of Thiru.N.Rajendiran, Advocate for the petitioner and Thiru.A.Sambandam, Advocate for Respondent and upon hearing the argument of both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

Petition filed under Order 26 Rule 9 of CPC to appoint the advocate commissioner to inspect the suit property with a qualified surveyor to note down the physical features of the suit property to measure the same to note down the exact area of encroachment and nature of encroachment and to note down the necessary details and for costs.

2.The Case of the Petitioner:

2.1. The petition has been filed by the 2nd Petitioner on behalf of 3rd petitioner also. The petitioners are the plaintiffs and the respondent is the defendant in the main suit. The 1st petitioner is father of 2 and 3 petitioners, has filed the main suit for specific performance in respect of the suit property, which is an extent of about 29,900 sq. ft, it is situated within Chidambaram Municipal Limits on the east and south of the backyard of the defendant Mutt. The land is not cultivated for more than 40 years. It is a low-lying area, and remained a vacant site with thorny bushes and other plants. On the eastern side there is Sengattan street, there is a passage from the Sengattan Street to the suit property. There is also another access from the South from Ponnambala Nagar to the suit property. North of the access point from Sengattan Street there are a few houses occupied by third parties. Their houses are facing east towards Sengattan Street. Since the suit property was not fenced on the eastern boundary line these occupiers have slowly encroached upon a portion of the suit property by taking advantage of an easy access from their backyard through the suit property. Previously when the petitioner's father was alive there was a flower garden in that encroached portion. Later since it was not maintained properly, the encroachers took advantage and encroached upon that portion. Because of the pending dispute from 2008 onwards the respondent Mutt had not taken steps to vacate or prevent the encroachers, it seems that they have done so to prevent the petitioners from enjoying the suit property even if the petitioners succeed in the suit. In the event of suit being decreed the petitioners cannot take possession of the encroached portion. The encroachers are likely to obstruct their possession. When the petitioner took steps to survey and to measure the suit property, the encroachers obstructed such survey. Therefore, the exact extent of the encroachment could not be found out. To realize the fruits of any decree that may be passed and to prevent further encroachment and to avoid multiplicity of proceedings it has become necessary that the suit property is surveyed and measured by a qualified surveyor in the presence of an advocate commissioner appointed. Such an

inspection and survey will facilitate getting correct information about the exact area of encroachment, the area of occupied by each encroacher and the particulars of the encroacher against whom necessary legal steps can be taken later if necessary. The commissioner can also note down the nature of encroachment to enable the court to grant appropriate reliefs at the time of passing of decree. Such a step will not in anyway cause any prejudice or hardship to the respondent. On the contrary it will also be helpful to the respondent. Therefore, the petitioner prays that to appoint the advocate commissioner to inspect the suit property with a qualified surveyor to note down the physical features of the suit property to measure the same to note down the exact area of encroachment and nature of encroachment and to note down the necessary details. Hence this petition.

3. The case of the Respondent:

It is true that the suit property is not cultivated for more than 40 years that it is a low lying area and remained a vacant site with thorny bushes and other plants, that on the eastern side there is Sengattan Street, that there is a passage from the Sengattan Street to the suit property, that there is also another access from the south from Ponnambala Nagar to the suit property, that North of the access point from Sengattan Street there are few house occupied by third parties, that their houses are facing east towards Sengattan street, and that the above occupiers have encroached upon a portion of the suit property. The allegation that the respondent Mutt had not taken steps to vacate or prevent the encroachers is denied by the respondent. The respondent has no objection for appointing an advocate commissioner to inspect the suit property with a qualified surveyor to note down the physical features of the suit property to measure and survey the same and to note down the exact area of encroachment and nature of encroachment.

4. Now the point for consideration is whether the petitioner is entitled to get the reliefs as prayed for?

5. On the side of petitioner and respondent, no oral and documentary evidence was let in.

Points For Consideration:

6. Heard both sides learned counsels. Material records perused. This is the petition filed to appoint the advocate commissioner to inspect the suit property with a qualified surveyor to note down the physical features of the suit property to measure the same to note down the exact area of encroachment and nature of encroachment and to note down the necessary details. The suit was filed for the relief of specific performance. This petition has been filed while the main suit was pending in the stage of arguments.

7. It is the case of petitioner that their father being the first petitioner has instituted the suit seeking specific performance in respect of the suit property, which is an extent of about 29,900 square feet. The said property is located within the Chidambaram Municipal Limits, situated to the east and south of the backyard of the respondent Mutt. The land has remained uncultivated for over 40 years and is as a low-lying area, lying vacant and overgrown with thorny bushes and wild vegetation. To the east of the property lies Sengattan Street, from which there exists a passage providing access to the suit property. There is also another access from the south from Ponnambala Nagar to the suit property. North of the access from Sengattan Street, there are a few houses occupied by third parties, their houses are facing east toward Sengattan Street. Their boundaries end with the eastern boundary line of the suit property. Since the suit property was not fenced on the eastern boundary line, these occupiers have slowly encroached upon portions of the land by taking advantage of an easy access through their backyards. During the lifetime of the petitioners' father, a flower garden was maintained on the portion now encroached. However,

following his demise and the subsequent lack of maintenance, the said portion was gradually encroached. Since 2008, owing to the pendency of the dispute, the respondent Mutt has failed to take steps either to remove or prevent such encroachments. It appears that this inaction may have been done so to prevent the petitioners from enjoying the property even in the event of a decree in their favor.

8. The petitioners further contend that if the suit is decreed, the petitioners may face obstacles in taking possession of the encroached portion, as the encroachers are likely to resist. When the petitioners attempted to have the property surveyed and measured, the encroachers obstructed the process, thereby preventing the determination of the exact extent of encroachment. In order to give effect to any decree that may be passed, to prevent further encroachments, and to avoid multiplicity of proceedings, it has become necessary to have the suit property surveyed and measured by a qualified surveyor, under the supervision of an Advocate Commissioner.

9. On the side of the respondent, there was no objection for appointing an advocate commissioner to inspect the suit property with a qualified surveyor to note down the physical features of the suit property to measure and survey the same and to note down the exact area of encroachment and nature of encroachment.

10. Since the respondent has not objected to the appointment of advocate commissioner and upon considering the facts and circumstances of the case, and in the interest of justice, this Court is of the view that the appointment of an Advocate Commissioner with the assistance of a qualified surveyor is necessary for a proper and fair adjudication of the dispute. Hence this court is inclined to allow this petition.

In the result, this petition is allowed. Advocate **Mr.S.Senthil (M/S.1684/2001)** is appointed as Advocate Commissioner. The Advocate Commissioner is directed to inspect and to note down the physical features, and measurements of the suit property along with the assistance of Taluk Surveyor. Further, he is directed to file a detailed report and plan along with Surveyor's report and plan. The remuneration of the Advocate Commissioner is fixed as Rs.8000/- by this court. The said amount has to be paid by the petitioner to the Advocate Commissioner as directly within 29.04.2025 and memo has to be filed in this regard. The Advocate Commissioner's report shall be filed without unreasonable delay. Call on 21.08.2025.

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 14th day of August 2025.

ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM

List of witnesses and documents on the side of the petitioners:

NIL

List of witnesses and documents on the side of the respondents:

NIL

ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM