

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF, TITTAGUDI

Present: Selvi.N.Shalini, B.Com.LL.B.(Hons.)

Additional District Munsif, Tittagudi

On Saturday, the 25th day of October 2025

IA.No.185/2025 in O.S.No.14/2024

Annadurai

...Petitioner/ Plaintiff

/Vs/

1. Rajangammal,
2. Rajamani,
3. Vennila,
4. Sriram,
5. Srikanth,
6. Annadurai.

...Respondents/Defendants

This petition was filed on 08.07.2025 and coming before me for final disposal on 25.10.2025 in the presence of Mr.R.Rajesh, Counsel for Petitioner, Mr.Ambikabathi, Counsel for Respondents. Upon perusing the written arguments of both sides and upon perusing the materials on record, this court doth hereby pronounce the following;

ORDER

1. This petition in I.A.No.185/2025 has been filed under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to inspect the petition property, measure the said property with the assistance of the Surveyor and note down the physical features and file a report along with a sketch.

2. BRIEF AVERMENTS OF THE PETITION:

2.1. On perusal of the petition, it has been stated that the Petitioner has filed a suit for declaration, recovery of possession and mandatory injunction. On the basis of some forged documents, the husband of the 1st Respondent has obtained patta No.649 for S.Nos.269/7 and 269/8 and the petitioner has initiated proceedings to cancel the said patta. Originally the petition property was in S.No.269/1B and presently it is 269/8 for 0.14.0 Ares and out of the same, the petition property is only 0.08.0 Ares. On 22-04-1935, one Alagappa Padaiyachi purchased 0.61 ½ Cents and after his death, his legal heirs Chellamuthu, Murugan, Arumugam orally partitioned 0.20 ½ Cents each. During 1989, the said Arumugam and his heir Gengachalam sold more than their share including the petitioner's share altogether amounting to 0.70 Cents i.e. 0.17 Cents in S.No.269/1 and 0.53 Cents in S.No.269/2B in favour of Selvarani. On 06-05-2002, the said Selvarani knowing about the encumbrance wrongfully sold the property in favour of the husband of the 1st Respondent. The said document is also null and void. Hence, the petitioner filed the present petition for appointment of advocate commissioner.

3. BRIEF AVERMENTS OF THE COUNTER:

3.1. In the counter, the Respondents have denied the entire averments stated in the affidavit of the petitioner. The Respondents state that there was a partition suit in O.S.No.86/1982 on the file of Hon'ble Sub-Court, Vridhachalam filed by one Arumugam against the father of the petitioner. On 17-10-1986 the said suit was

decreed in favour of the Arumugam and the petitioner preferred an appeal was filed in A.S.No.151/1987 before the Hon'ble High Court, Madras. The appeal was partly allowed on 28-02-2002. Thereafter an L.P.A.No.02/2005 was filed before the Hon'ble High Court Madras. During the pendency of the proceedings, on 28-09-2016 the parties entered into a compromise agreement and the same was allowed on 19-10-2016. In the meantime, the petitioner filed an E.P.No.17/2010 before the Sub-Court, Vridhachalam and the said proceedings were stayed. After the decision on 19-10-2016 in LPA.No.02/2005 the parties therein mutated patta in their respective names. Since the petition property is near the Vridhachalam main road and going for a good price, the petitioner is attempting to grab the property. The suit filed by the petitioner is barred by the principle of Res Judicata. The petitioner only for the purpose of filing the present suit has falsely stated that the legal heirs Alagappa Padaiyachi entered into an oral partition. Hence, the petition is liable to be dismissed with cost.

4. POINTS FOR CONSIDERATION:

I. Whether this petition shall be allowed or not?

No oral arguments were submitted by the counsel for both the parties and only written arguments have been filed by both the parties.

5. DISCUSSION AND REASONING:

5.1. The suit has been filed claiming for recovery of possession and mandatory injunction. Originally the petition property was in S.No.269/1B and presently it is 269/8 for 0.14.0 Ares and out of the same, the petition property is only 0.08.0 Ares.

On 22-04-1935, one Alagappa Padaiyachi purchased 0.61 ½ Cents and after his death, his legal heirs Chellamuthu, Murugan, Arumugam orally partitioned 0.20 ½ Cents each. Then, the said Arumugam and his heir Gengachalam sold more than their share including the petitioner's share altogether amounting to 0.70 Cents i.e. 0.17 Cents in S.No.269/1 and 0.53 Cents in S.No.269/2B in favour of Selvarani On 06-05-2002, the said Selvarani knowing about the encumbrance wrongfully sold the property in favour of the husband of the 1st Respondent.

5.2. Per contra, the Respondents have challenged the very maintainability of the suit by claiming that the suit itself is barred by the principle of Res Judicata. However, the Respondents have failed to produce any documentary evidence to establish that the suit itself is not maintainable. In the instant case, the principle of Res Judicata is a mixed question of fact and law and the same can be decided at the time of trial.

5.3. Though the Respondents have challenged the very maintainability of the suit, the same cannot be decided in the present application. The Advocate commissioner is the eyes and ears of the court. Since, the suit has been filed for declaration, recovery of possession and mandatory injunction, it is just and essential to appoint an advocate commissioner to measure the suit property and note down the physical features.

5.4. Hence, this court is inclined to allow this petition. Advocate Ms.P.Prabha Ms.No.5006/2024 is appointed as the advocate commissioner and the advocate

commissioner with the assistance of surveyor shall measure the suit property and note down the physical features and file a report. The Remuneration for the commissioner is fixed at Rs.6,000/- and the same shall be paid on or before 07.11.2025 failing which this petition shall stand automatically dismissed.

Directly typed by me in my laptop, formatted by Typist, corrected and pronounced by me in the open court, on this the 25th day of October 2025.

Additional District Munsif,
Tittagudi.

ORAL AND DOCUMENTARY EVIDENCE ON THE SIDE OF THE PETITIONER:

NIL

ORAL AND DOCUMENTARY EVIDENCE ON THE SIDE OF RESPONDENTS:

NIL

Additional District Munsif,
Tittagudi.

Draft Order/Fair Order
IA.185/2025 in
O.S.No.14/2024
Date: 25.10.2025