

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 18th day of April 2026

IA.No.53/2026 in O.S.No.64/2025

Arulmurugan,

... Petitioner / Plaintiff

/Vs/

1. Ramanathan,

2. Victoria Maharani,

3. Vinothini

... Respondents/ Defendants

This petition was filed on 27.01.2026 and coming before me for final disposal on 18.04.2026 in the presence of Mr.Abarajithan; Counsel for Petitioner, Mr.Kan.Radhakrishnan, Counsel for Respondents. Upon hearing the 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.53/2026 in O.S.No.64/2025 has been filed under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner for the purpose of elucidating matter of wire fencing dispute, put up by the 1st defendant with the support of the 2nd and 3rd defendants in the "F" schedule suit property.

2. BRIEF AVERMENTS OF THE PETITION:

2.1. The Petitioner/Plaintiff states that the inheritance of his property comes from his grandfather Kandasamy under a partition deed No:866/1976 and the total extend 4500.39 Sqft of "F" schedule property in the survey Nos; 69/7B, 69/8A3 and 69/5. It is common for all share holders for using the land for agricultural activities

such as irrigation for crops, plants and cultivation. The plaintiff has only that way to go to his agricultural land through the said common "F" schedule suit property. The father of petitioner demised on 13.03.2015 at Eraiyur village leaving behind his legal heirs. The petitioner has been continuing farming in his 1/3 share land of his inheritance property of his father.

2.2. The petitioner states that the agricultural land of the 1st defendant is adjacent to the petitioner's "F" schedule common property. The defendants are the adjacent to the plaintiff's west side agricultural land. The 1st defendant put up wire fencing at the said common land, joining with Thirumurugan and Mehala, Muthurangam, by blocking the passage of agricultural land of the Plaintiff. Due to the planned encroachment by wire fencing in the common land by Dhanushkoti and others, the Petitioner is unable to use his tractor and other machinery in his agricultural land.

2.3. When the petitioner asked Respondents to remove the wire fencing at his entitled common land mentioned in the partition deed, all of them cursed, insulted and threaten him with abusive words and attacked the plaintiff. The respondents have broken the common irrigation pipe by JCP which was above 40 years old and closed the common well. The petitioner has suffered huge loss and has mental distress and unable to do any agricultural business.

2.4. The petitioner states that after some months the 1st defendant along with R.Thirumurugan and other goondas, attacked the plaintiff severely and the plaintiff was admitted in ICU immediately at Kauvery hospital, Trichy. The Petitioner states

that he had given complaint against the 1st Respondent before the Inspector of Police, Eraiyur. But it was vain. The petitioner had also given a complaint to the Collector, and RDO, Cuddalore on 15.08.2023 regarding the encroachment by the defendants. When the VAO and other officials came to the property, the Respondents did not allow the enquiry.

2.5. The petitioner had sent a legal notice to the Respondents on 07.05.2024. The petitioner states that the said common "F" schedule suit property land is the only one way to go to his agricultural land. The petitioner states that it is necessary to immediately remove the wire fence from the said suit property of "F" Schedule common land. Hence the present petition has been filed for appointing an Advocate Commissioner.

2.6. The Respondents have endorsed no counter on 26.03.2026.

3. THE POINT FOR CONSIDERATION:

Whether this petition shall be allowed or not?

Heard the arguments of the learned Counsel for petitioner. Perused all available material on record.

4. DISCUSSION AND REASONING:

4.1. It is a well settled position of law that an Advocate Commissioner cannot be appointed in a suit for bare injunction. Only when there is a dispute with regard to the identity of the property or in the boundaries of the property, a Commissioner can be appointed. The Advocate Commissioner cannot be appointed to prove possession

or collect evidence and it is the bounden duty of the parties to establish their case through oral and documentary evidence.

4.2. The Hon'ble High Court, Madras in Selvan vs. Alagappan Udayar (CRP. (PD).No.2065/2015 dated 13.07.2015) observed that *"It is the duty of the respondent/plaintiff to prove his case by letting oral and documentary evidence. But that factum was not considered by the trial Court. Hence, I am of the view, the trial Court has erroneously allowed the application for appointment of Advocate Commissioner to collect evidence."*

4.3. The Advocate Commissioner cannot be appointed for making an enquiry about the factum of possession of the property in dispute. Since the same has to be adjudicated upon framing issues and on appreciation of evidence.

4.4. In a bare suit for injunction, the only question that the Court has to look into is whether the plaintiff is having prima facie title, physical possession and any irreparable damage that would arise if the injunction is not granted.

4.5. In the instance case, the petitioner has sought for appointment of Advocate Commissioner for the purpose of elucidating the wire fencing dispute. Although the Respondent has endorsed "no counter" it is necessary for this Court to pass an order only on merits. It is pertinent to point out that the petitioner has filed a suit only for a bare injunction. Even in the written statement filed by the defendants, there is no dispute regarding the identity or the boundaries of the property. In such circumstances, appointing a Commissioner will lead to collection of evidence. Furthermore, the petitioner has not stated for what purpose the commission is

required such as whether to note down the physical features or to measure the suit property with the assistance of a Taluk Surveyor.

4.6. In light of the above decision and discussion this court is not inclined to allow this petition to appoint an Advocate Commissioner in a suit for bare injunction.

In the result this petition is dismissed. No cost.

Directly typed by me in my laptop, formatted by Typist, corrected and pronounced by me in the open court, on this the 18th day of April 2026.

Additional District Munsif,
Tittagudi.

Fair Order
IA.53/2026 in
O.S.No.64/2025
Date: 18.04.2026