

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF , TITTAGUDI

PRESENT: SELVI. N.SHALINI, B.Com.LL.B.(Hons.)

ADDITIONAL DISTRICT MUNSIF, TITTAGUDI

PRINCIPAL DISTRICT MUNSIF, TITTAGUDI (F.A.C)

Monday, the 16th day of March 2026

I.A.No.69/2024

in

O.S.No.155/2005

Marimuthu

... Petitioner/ Plaintiff

-Vs-

1.The District Collector, Cuddalore

2.The Tahsildar, Tittagudi

3.The Village Administrative Officer, Mangalur Village,
Tittagudi Taluk.

4.Pattani @ Pattaniraja

... Respondents / Defendants

This petition coming on 09-3-2026 for final hearing before me in the presence of Thiru.E.Durai, Advocate for the petitioner and Learned Government Pleader for Defendant No. 1 to 3 and Rama.Visveswaran, Counsel for Defendant No.4 upon perusing all the material records and having stood over for consideration, till this day, this court delivered the following:-

ORDER

1. This petition in I.A.No.69/2024 in O.S.No.155/2005 has been filed by the Petitioner/Plaintiff under Order 26 Rule 9 CPC and Section 151 CPC to re-issue the warrant to the Advocate Commissioner to re-visit the petition property and conduct survey in accordance with the instructions provided in the A.S.No.109/2019 as well as the documents in Ex-A1 to A9, Natham Chitta, with the assistance of a Surveyor

and the Village Administrative Officer, measure the property based on the title deeds, the four boundaries, the measurements in the FMB sketch and the physical measurements on the ground and file a report along with sketch.

2. BRIEF AVERMENTS OF PETITION:

2.1. The petitioner is the Plaintiff in the suit. He has filed a suit for declaration and permanent injunction. The suit was dismissed and the petitioner filed an appeal in A.S.No.21/2018 before the Sub-Court of Tittakudi. Based on a transfer petition from the Principal District Court, Cuddalore, the case was transferred to the Additional District Court, Virudhachalam and renumbered as A.S.No.109/2019. The appeal was allowed on 27-02-2020.

2.2. The instructions provided by the Appellate Court in Paragraph 3 and from Paragraphs 11 to 18 on page 11 of the judgment have not been followed. Specifically, in Paragraph 18, the Court ordered a Commissioner to measure the land with the assistance of a Land Surveyor and the Village Administrative Officer (VAO) based on relevant title deeds and revenue department documents and to submit a report. The Court further directed that, based on that report, both parties should be given an opportunity to present oral and documentary evidence to reach a correct conclusion regarding the East-West and South-North measurements and the source of title for the suit property. However, the instructions given by the Appellate Court were not mentioned in the Commissioner's Appointment Warrant; instead, it was narrowly noted only as "Petition mentioned prayer."

2.3. The Advocate Commissioner was appointed, an inspection was conducted, and the report has been filed. In the appeal, since the court did not provide directions, no commissioner was appointed. The petitioner has also filed his objection to the report filed by the Advocate Commissioner. Hence, the present petition.

3. BRIEF AVERMENTS OF THE COUNTER FILED BY THE 2ND RESPONDENT

3.1. The counter has been filed in the form of memo of objections. The 2nd Respondent has denied the entire averments contained in the petition. The Petitioner is bound to prove the facts mentioned in the petition. However, the Respondent has stated that this Respondent is bound by the orders passed by this court. The objections filed by the 2nd Respondent is adopted by the 1st and 3rd Respondents.

4. BRIEF AVERMENTS OF THE COUNTER FILED BY THE 4TH RESPONDENT:

4.1. The 4th Respondent has denied the entire averments contained in the petition and the petition is liable to be dismissed with cost. After the judgment of the Additional District Court, Virudhachalam, Advocate Mr.Kamaraj was appointed as the Commissioner. Based on the said decree, the Commissioner measured the property and filed a report along with sketch. Hence, filing a petition again requesting for the appointment of a Commissioner is not sustainable in law. Claiming that a Commissioner should be appointed again for the same property is merely an attempt

to delay the case. The petitioner's contention to appoint a Commissioner at this stage is not legally acceptable. In the petition, it is evident that no explanation was provided regarding the report filed by the Commissioner appointed as per the judgment of the Virudhachalam Additional District Court, that the petitioner has wrongly filed this petition merely to delay the suit proceedings.

4.2. Furthermore, the report and plan filed by the Advocate Commissioner Mr.Kamaraj has not been scrapped. When they have not been scrapped in such a manner, a Commissioner cannot be appointed again. Therefore, there is no necessity to appoint a Commissioner as requested by the petitioner. Hence, this petition is liable to be dismissed.

5. THE POINT FOR CONSIDERATION:

Whether this petition shall be allowed or not?

Heard the oral arguments of the Respondents and written arguments were filed by the learned counsel for the Petitioner and perused all available material on record.

6. DISCUSSION AND REASONING:

6.1. It is the only contention of the learned counsel for the petitioner that the directions of the appellate court were not mentioned in the warrant of the commissioner and it has been merely mentioned as the property mentioned in the petition.

6.2. The learned counsel for the Respondents argued that the property has been clearly identified and the property has been mentioned with dimensions. Without

scrapping the report of the commissioner, this court cannot allow the present petition.

6.3. On perusal of the report of the Advocate Commissioner, he has categorically mentioned that he had measured the property based on the documents provided by both the parties along with memo. The petitioner/plaintiff's counsel gave a memo along with the copies of documents dated 24-04-2000, 21-03-1983, 21-03-1983, 03-04-1984 and 17-09-1998. Likewise, the 4th Respondent/ Defendant's counsel gave a memo along with the copies of documents dated 31-10-1975, 06-05-1981 and 03-06-1977. Also, he has measured the property with the assistance of the surveyor, village administrative officer. Hence, it is evident that the Advocate Commissioner has already measured the petition property in accordance with the directions of the first appellate court.

6.4. The petitioner has not pointed out any discrepancy in the report filed by the Advocate Commissioner in order to seek the reissue of the warrant. No 'substantial error' or 'omission' has been demonstrated by the petitioner that would necessitate a reissue of the warrant to the commissioner

6.5. It is a well-settled position of law that the Advocate Commissioner cannot be appointed for collecting evidence when it is for the party to collect evidence and prove his case. It is a settled principle of law that a Commissioner cannot be reappointed simply because one party is dissatisfied with the findings.

6.6. Furthermore, the suit is pending for the plaintiff side evidence. At this juncture, the Petitioner has filed the present petition only to prolong the suit proceedings. Reissuing the warrant at this stage would result in an unnecessary waste of time and an abuse of the process of law. Hence, the petition is devoid of merits and this court is not inclined to allow this petition.

In the result, this petition is dismissed. No costs.

Directly typed by me in my laptop, formatted by the Steno - typist, corrected and pronounced by me in the open court, on this the 16th day of March 2026.

Principal District Munsif, (F.A.C)
Tittagudi.

Fair Order
I.A.No.69/2024
in
O.S.No.155/2005
Date: 16.03.2026