

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

**PRESENT:** Tmt. V.Devapriya, B.Sc., M.L.,  
District Munsif, Madurantakam  
Thursday, the 24<sup>th</sup> day of October, 2024

I.A.No.6/2024

in

I.A.No.5/2023

in

O.S.No.113/2022

Jerome

...Petitioner/  
Respondent/Defendant

**-Vs-**

Annamary

...Respondent/  
Petitioner/Plaintiff

This petition coming up before me on 25.09.2024 for final hearing in the presence of, Thiru.G.S.Suresh Babu, counsel for Petitioner/Respondent/Defendant and Thiru.N.Ganapathy, counsel for Respondent/Petitioner/Plaintiff and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

**ORDER**

This petition has been filed by the Petitioner/Respondent/Defendant under Order XXVI Rule 9 read with Section 151 of Code of Civil Procedure, for appointment of advocate commissioner to note down the physical features and to measure the suit property and also to note down the physical features and measure the

property in Meikkal S.No.285/2, which is in possession of Petitioner/Respondent/Defendant, with the help of Taluk Head Surveyor, Madurantakam Taluk and to file his report before this court.

**2.The averments stated in the petition, in brief :**

The Respondent/Petitioner/Plaintiff had filed the above suit for permanent injunction in respect of gramanatham S.No.285/29 to an extent of 0120 sq.meter or 0.03 cents and for which he had filed interim application in I.A.No.2/2022 and the same was allowed on 30.08.2023, in respect of the property in gramanatham S.No.285/29. The Petitioner/Respondent/Defendant is in possession of an extent of 0.05 cents in Meikkal S.No.285/2 situated at Madura Kunnathur Thatchur Village, Madurantakam Taluk. After obtaining interim injunction from this court, the Respondent/Petitioner/Plaintiff have highhandedly trespassed into his property which is situated at Meikkal S.No.285/2 instead of S.No.285/29 and he is cutting trees.

3. Immediately on 18.10.2023, the Petitioner/Respondent/Defendant had lodged complaint before the Anaicut Police station and CSR number was issued. Since it is the civil dispute, the Police Officials had advised them to approach the Civil Court. The Respondent had filed a vexatious petition in I.A.No.5/2023 as against him to grant of police aid and the same is not at all maintainable. Hence the petition.

**4. The averments stated in the counter filed by the Respondent/Plaintiff, in brief:**

This petition is not maintainable under law and on facts. The averments in the affidavit are false. The Respondent/Petitioner/Plaintiff is in possession and enjoyment

of gramathanam S.No.285/29 to an extent of Ac. 0.03 cents. The Government recognized his possession and granted patta in gramathanam scheme. The Petitioner/Respondent/Defendant is never in possession and enjoyment of S.No.285/2 to an extent of Ac. 0.05 cents. The Petitioner/Respondent/Defendant could not file document for the Meikkal S.No.285/2. The Petitioner/Respondent/Defendant already interfered with the Respondent/Petitioner/Plaintiff's possession and hence the Respondent/Petitioner/Plaintiff filed the above suit for bare injunction against the Petitioner/Respondent/Defendant. This court was also granted interim injunction on 30.08.2023.

5. On 18.10.2023, while the Respondent/Petitioner/Plaintiff was cleaning his property with JCB and cutting the trees, the Petitioner/Respondent/Defendant prevented the work and stopped the JCB and they also abused the Respondent/Petitioner/Plaintiff in filthy languages. The Respondent/Petitioner/Plaintiff had lodged complaint before the Anaicut Police station. The police did not take any action against him. The Petitioner/Respondent/Defendant had also got very many henchmen and use political influence. The Petitioner/Respondent/Defendant is fully aware of the order granted against him. The Respondent/Petitioner/Plaintiff filed petition for police aid in I.A.No.5/2023 and the same is pending before this court, at the stage of counter. Without filing counter in I.A.No.5/2023, the present petition filed by the Petitioner/Respondent/Defendant is not maintainable in law.

6. The Petitioner/Respondent/Defendant filed this petition for appointment of Advocate commissioner to measure the properties in gramamatham S.No.285/29 and meikkal S.No.285/2 is in correct. The meikkal S.No.285/2 is not a suit property. Hence, this petition is not maintainable in law. The Petitioner/Respondent/Defendant had given the boundaries for both the survey numbers. The Petitioner/Respondent/Defendant could not give the separate boundaries for both the survey number. Hence, the meikkal S.No.285/2 cannot be measured and cannot be identified by the Taluk Head Surveyor. The petition mentioned property is not properly described. The boundaries given by the Petitioner/Respondent/Defendant is in correct.

7. The allegations stated in the petition creates new cause of action and introduce a new case. The Government Revenue officials are not party to the suit. The petition filed by the Petitioner/Respondent/Defendant is only for collecting evidence. There is no merits in this petition. Hence, this petition is liable to be dismissed with costs.

8. The point for determination is whether this petition is to be allowed or not?

9. On the side of Petitioner/Respondent/Defendant, Exhibits P1 to P4 marked and on the side of Respondent/Petitioner/Plaintiff, no Exhibits were marked and no witnesses were examined on both sides.

10. Heard both sides and perused the records.

11. The Petitioner/Respondent/Defendant had filed this petition to appoint Advocate Commissioner to note down the physical features of his property. The

Respondent/Petitioner/Plaintiff resisted the petition stating that this petition is filed to collect evidence and that the Petitioner/Respondent/Defendant is introducing new cause of action.

**12.** The Petitioner/Respondent/Defendant had stated that he is in possession of Meikal S.No. 285/2 to an extent of Ac 0.05 cents, in Madura village and that the Respondent/Petitioner/Plaintiff had obtained temporary injunction in the above suit and at the time of cleaning the suit property, the Respondent/Plaintiff is cutting down the trees in the land that is in possession of the Petitioner/Respondent/Defendant.

**13.** Admittedly, the above suit was filed for permanent injunction in respect of the gramanatham S.No.285/29 to an extent of 0120 square meters, in the Kunnathur Madura Thatchur village. In the above suit, the Respondent/Petitioner/Plaintiff had alleged that the Petitioner/Respondent/Defendant is interfering her possession over the suit property. Therefore, the issues that arise in the above suit is only with regard to the Respondent/Petitioner/Plaintiff's possession in the suit property and the alleged interference by the Petitioner/Respondent/Defendant.

**14.** In the present petition, the Petitioner/Respondent/Defendant prays to appoint Advocate Commissioner to inspect his property in Meikal S.No. 285/2 to an extent of Ac 0.05 cents, in Madura village, which is not the suit property. The Petitioner/Respondent/Defendant alleges that the Respondent/Petitioner/Plaintiff is causing interference to his possession in his property. Thus, the Petitioner/Respondent/Defendant had introduced a new cause of action, which is not

related to the suit property. The Exhibit P-1 to P-4 do not support the relief claimed by the Petitioner/Respondent/Defendant, in this petition.

**15.** The Petitioner/Respondent/Defendant further stated that it is necessary to appoint Advocate Commissioner to find out whether the Petitioner/Respondent/Defendant is in possession of Meikal S.No. 285/2 or in S.No. 285/29 and that on finding the same, the dispute will come to end. The settled law is that the Advocate Commissioner cannot be appointed to find the factum of possession or to collect evidence. Hence, for the foregoing reasons, this court is not inclined to allow this petition.

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

Partly Dictated to the Stenographer, typed by her and partly typed by me in my laptop and corrected and pronounced by me in open court on this the 24<sup>th</sup> day of October, 2024

District Munsif  
Madurantakam

**Petitioner side witnesses:**

-Nil-

**Petitioner side documents:**

- Ex P1 - Copy of petition given by Agastina, Thatchur Village on behalf of himself and the Villagers of Kunnathur Madura Thatchur Village dated 17.08.2009
- Ex P2 - Copy of complaint dated 18.10.2023
- Ex P3 - Copy of CSR dated 18.10.2023
- Ex P4 - True copy of resolution passed by the Panchayat President of Kunnathur Village Panchayat for grant of patta in favour of Villagers of Kunnathur Madura Thatchur Village in respect of Meikkal S.No.285/2 dated 23.05.2023

**Respondent side witnesses and documents:**

-Nil-

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Madurantakam