

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

**PRESENT:** Tmt. V. Devapriya, B.Sc.,M.L.,  
District Munsif, Madurantakam

Tuesday, the 20<sup>th</sup> day of December, 2022

I.A.No. 5/2022  
in  
O.S.No. 115/2020

Murugan

...Petitioner/Plaintiff

**-vs-**

Mangai

...Respondent/Defendant

This petition coming up before me on 29.11.2022 for final hearing in the presence of, Thiruvalargal.K.Selvam, and R.Chenthamizhan, counsel for the Petitioner/ Plaintiff and Respondents/Defendants having been called absent and set exparte on 26.10.2022 and after hearing the arguments on the Petitioner side 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/Plaintiff under Order XXVI Rule 9 of Code of Civil Procedure to appoint an Advocate Commissioner to inspect the S.No. 29/2 and 29/3 and note down the physical features of the same and direct him/her to file a report with plan.

**2.The averments stated in the petitions in brief:**

The suit property was purchased by the Petitioner/Plaintiff's father Kathavarayan from Murugesan Gounder, Modaiyandi Gounder and Arumugha Gounder under registered Sale Deed dated 27.08.1973. The patta No.11 was granted in favour of the Petitioner/Plaintiff's father on 29.08.1994 for the 5 cents land . The group house is situated in 2 -1/4 cents in S.No.29/2 and the S.No.29/3 to an extent of 2- 3/4 cents is vacant place. In S.No.29/2 group house was constructed in the name of Petitioner/Plaintiff's father. The Respondent/Defendant had encroached the said house along with the vacant site in S.No.29/3. Hence the Petitioner/Plaintiff had filed petition seeking injunction against the Respondent/Defendant and the injunction was granted on 04.11.2020. While the injunction is in force, the Respondent/Defendant had encroached the group house and the vacant land on 12.11.2020. The appointment of Advocate Commissioner is necessary to find whether the Respondent/Defendant has title over the encroached property and whether the Respondent/Defendant had encroached the suit property and whether the service connection has been given to S.No.29/2 and whether there is the group house in S.No.29/2 and also to find out who has title over the S.No.29/2. Hence this petition.

3. The Respondents/Defendants were called absent and set exparte on 26.10.2022 for non-filing of counter.

4. The point for determination is whether this petition is to be allowed or not?
5. No Exhibits marked and no witnesses were examined on both sides
6. Heard Petitioner side arguments and perused the records.
7. The Petitioner/Plaintiff had filed this petition to appoint the Advocate commissioner alleging that the Respondent/Defendant had encroached in the suit property. The Respondent/ Defendant had mentioned 5 points in his affidavit, the purpose for which the appointment of Advocate Commissioner is necessary. The question of title and the question of possession has to be proved only through oral and documentary evidence by the Petitioner/ Plaintiff and the Advocate Commissioner could not be appointed for finding the factum of possession and title. The Petitioner/Plaintiff had alleged that the Respondent/ Defendant had encroached the suit properties. The Petitioner/Plaintiff had filed this petition only to note down the physical features of the suit properties. Only when the suit properties are measured with the help of Surveyor by verifying the revenue records, the alleged encroachment can be found. But the prayer of the Petitioner/Plaintiff is not so. Merely by noting down the physical features of the suit properties, the Advocate Commissioner cannot find the alleged encroachment. Hence, for the foregoing reasons, this court is not inclined to allow this petition.
8. In the result, this petition is dismissed. No costs.

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Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 20<sup>th</sup> day of December, 2022

District Munsif  
Madurantakam

**Petitioner side witnesses and documents:**

Nil

**Respondent side witnesses and documents:**

Nil

District Munsif  
Madurantakam