

IN THE COURT OF DISTRICT MUNSIF, HARUR

**Present: Tmt. SRI MATHURA S, LL.M.,
DISTRICT MUNSIF, HARUR**

On Friday, the 21st day of November 2025

IA. No:02/2025

In

O. S. No:134/2012

Shanmugam

...Petitioner/Plaintiff

-Vs-

Karungkannan@Jayaraman

...Respondent/Defendant

This interlocutory application came for final hearing on 10.11.2025 before me in the presence of Adv.Mr.R.Ramajayam,M.A.,B.L, for Petitioner/Plaintiff and Adv.Mr.C.Gandhi,B.Com.,LL.B, for the Respondent/Defendant. Upon perusing available material records and on hearing both sides and having stood over consideration till this date, the court delivers the following.

ORDER

This interlocutory petition has been filed by the Petitioner/Plaintiff under **Order 26 Rule 9** seeking the appointment of an Advocate Commissioner to note the physical features of the suit property, measure the property along with the extent of the alleged encroachment, in the presence of a qualified surveyor and the Village

Administrative Officer and submit a detailed report with a plan drawn to scale and thus render justice.

I) The Contention of the Petitioner /Plaintiff in brief :

1.1) The Petitioner humbly submits that he is the Petitioner/Plaintiff in the above suit and has filed a suit for declaration and permanent injunction, in respect of the suit property as against the Defendant.

1.2) The Petitioner humbly submits that the trial has been completed in the said suit, and the matter now stands adjourned for arguments. During the pendency of the suit, the respondent/defendant and his family members have produced forged documents and made false declarations regarding the Petitioner's 0.03-cent land. The Respondent/Defendant have illegally encroached upon the said land, causing obstruction to the Petitioner's use of the access road leading to his property.

1.3) The Petitioner humbly submits that during the pendency of the litigation, the Defendant has unlawfully altered the boundaries and survey numbers of the suit property by creating a sham and nominal partition deed among his family members. The portions of the suit property allotted to the Petitioner have now been encroached upon and occupied by the Defendants.

1.4) The Petitioner humbly submits that the appointment of an Advocate Commissioner is essential to establish before this Hon'ble Court the fact of encroachment, the Petitioner's exclusive access to his land through the disputed portion, and the constructions allegedly put up by the Defendant. The Commissioner's report is necessary to enable proper adjudication and, if required,

removal of the encroachment after trial. Unless a Commissioner is appointed, the Petitioner will suffer irreparable loss and hardship. Thus prayed to allow the petition.

II) The Contention of the Respondents/Defendants in brief :

2.1)The respondent humbly submits that the contentions raised by the petitioners are false and baseless, and the burden of proof lies solely on the petitioners to establish their claims. Except for the averments specifically admitted herein, all other allegations made by the petitioners are expressly denied.

2.2) The Respondent humbly submits that the Petitioner has filed the present petition on 22.03.2024 after obtaining several adjournments at the stage of final arguments. Filing such a petition at this belated stage clearly shows that the Petitioner, having no likelihood of succeeding in the suit, has filed this petition only to delay the proceedings.

2.3) The Respondent humbly submits that the suit was filed in 2012, and the Respondent filed his written statement on 23.01.2013, wherein, in paragraph 10, he specifically stated that the rough plan filed by the Petitioner was incorrect. In spite of this clear objection, the Petitioner did not take any steps during the last 13 years to seek appointment of a Commissioner for proper measurement. The present petition has been filed only to collect fresh evidence, which is impermissible at this stage.

2.4) The Respondent humbly submits that the unexplained delay of 13 years in filing this petition is wholly unjustified and amounts to an abuse of the process of

Court. The Petitioner has not furnished any valid or convincing reason for approaching this Hon'ble Court at such a belated stage. The Respondent, aged about 85 years, is put to severe mental agony and hardship due to the Petitioner's tactics. The petition is frivolous, motivated, devoid of merit, and liable to be dismissed with exemplary costs.

III) Points for Consideration :

Whether the petitioner is entitled to relief as prayed for ?

IV) Discussion :

4.1) Both side enquiry heard and upon careful consideration of available material records, it is seen that the petitioner/ plaintiff had filed an interlocutory application under **Order 26 Rule 9** seeking the appointment of an Advocate Commissioner to note the physical features of the suit property, measure the property along with the extent of the alleged encroachment, in the presence of a qualified surveyor and the Village Administrative Officer and submit a detailed report with a plan drawn to scale and thus render justice.

4.2) No oral and documentary evidence adduced on both the sides.

4.3) The court has carefully considered the submissions of the learned counsel for the Petitioner as well as the learned counsel for the Respondents. The Petitioner contends that the Respondents have encroached upon a portion of the suit property, altered boundaries, and obstructed his access pathway, and therefore the

appointment of an Advocate Commissioner is essential to ascertain the encroachment and the physical features of the property. On the other hand, the Respondents submit that the petition has been filed at an extremely belated stage, after the trial has been completed and the matter is posted for final arguments, solely with an intention to protract the proceedings. They further submit that the Petitioner was aware, from the year 2013 itself, that the rough plan filed along with the plaint was disputed, yet the Petitioner failed to take any steps for 13 years, and that the present application amounts to an attempt to collect fresh evidence.

4.4) The main question that arises for consideration is whether an application seeking appointment of an Advocate Commissioner can be entertained at the stage when the suit stands posted for final arguments.

4.5) It is well-settled that a Commission cannot be appointed to fill up lacunae or to enable a party to collect evidence at a belated stage. The Hon'ble Madras High Court in *Kaliamman Sivan Koil v. K.P. Ramalingam & Another (2014)* has categorically held that *"the belated filing of the application at the stage of arguments discloses the intention of the plaintiff to drag on the proceedings... The application for appointment of Commissioner should have been filed before the closure of the plaintiff's evidence. No reasons have been stated as to why it was not filed at the earliest point of time."* The Court further emphasized that a Commissioner cannot be appointed to ascertain facts that parties ought to have proved through evidence during trial. In the present case, the Petitioner has not shown any sufficient cause for approaching this Court at such an advanced stage.

4.6) On perusal of the pleadings and records, it is seen that the suit has been filed for declaration of title, consequential permanent injunction, and mandatory injunction to remove the alleged encroachment said to have been made by the respondent/defendant. The Petitioner claims that the suit property is a cart-track; however, the defendants, in their written statement filed as early as 23.01.2013, specifically denied the existence of such a cart-track and also disputed the correctness of the rough plan filed along with the suit. Despite being fully aware of this categorical denial, the petitioner did not take any steps at any point during this case prior to arguments to seek the appointment of a Commissioner to establish the physical features. The present petition has been filed only at the stage of final arguments, after more than a decade, without offering any explanation for the delay. Entertaining the petition at this belated stage would certainly prejudice the respondents and would amount to allowing the Petitioner to fill up lacunae in his case, which is impermissible in law. In view of the above settled legal position and the facts of the case, this Court finds no merit in the petition, and the same stands dismissed.

V)Decision:

In result, this Court finds the petitioner is not entitled to the relief as prayed, and the petition stands dismissed. No orders as to cost.

Dictated to the Steno-Typist, typed by her in computer,
corrected and pronounced by me in open Court,
on the 21st day of November, 2025.

DISTRICT MUNSIF, HARUR

Annexure:

Petitioner side Evidence and Exhibits : Nil

Respondent side Evidence and Exhibits : Nil

DISTRICT MUNSIF, HARUR

Fair order

I.A.No.02/2025

in

O.S.No.134/2012

Dated:21.11.2025