

IN THE COURT OF THE DISTRICT MUNSIF, HARUR

Present: Tmt.SRI MATHURA S.LLM.,

DISTRICT MUNSIF, HARUR

On Friday, the 29th of August 2025

I.A.No: 763/2019

in

I.A.No: 269/2015

in

O.S.No: 48/2014

1.Ammaniyammal

2.pavayammal

3.Latha

...Petitioners /Respondents/ Plaintiffs

//Versus//

1.Theerthagiri (died)

2.Theerthammal

3.Mariyappan

4.Madhammal

5.Theerthalingam

6.Chennammal

7.Govindasamy

...Respondents/Defendants no 1, 2, 8 to 10

This petition came up on 22.08.2025 for final hearing before me in the presence of Adv.R.Ramajayam,M.A,B.L., for the petitioners/plaintiffs and Adv. C.Gandhi.B.Com.,LL.B., for the respondents/Defendants. Upon hearing the

Arguments of both sides and perusing the documents and having stood over till this day for consideration, this court delivered the following.

ORDER

This interlocutory petition is filed by the petitioner/plaintiff **under Section 151 of CPC** to scrap the Commissioner Report and plan filed in I.A.No: 269/2015 , and thereby render justice.

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

1.1) The petitioner respectfully submits that she is the 1st plaintiff in the main suit and files this petition also on behalf of plaintiffs 2 and 3. The petitioners have instituted a suit for permanent injunction against the respondents/defendants. Except defendants 1 and 2, all the other defendants have remained ex parte in the suit.

1.2) The petitioner submits that the respondents have alleged the existence of a pathway running across the land belonging to the petitioners and sought for the appointment of an Advocate Commissioner. Accordingly, an Advocate Commissioner was appointed in I.A.No.269/2015. The Advocate Commissioner inspected the suit property and filed his report, to which the petitioners have already filed their objections.

1.3) The petitioner further submits that at the time of the Commissioner's visit, the petitioner's counsel had filed a memo before the Advocate Commissioner. However, the Commissioner has failed to mention or deal with the said memo in his report. It is further submitted that there exists a purambokku land to the west of the suit property, but the Commissioner has wrongly described it as "Varattaru"

and has suppressed the true facts by falsely reporting that a pathway runs on the northern side of the suit property. In fact, no such pathway exists. There is a 100-year-old tamarind tree in the portion referred to by the Commissioner, the branches of which spread over the area up to a height of about 4 feet from the ground. In such circumstances, the Commissioner's statement that vehicles of the respondents have been using the alleged pathway is clearly false and indicates suppression of true facts in favour of the respondents. The respondents have further alleged that the said pathway is used to reach VEDIYAPPAN KOVIL at Kelapparai, but the Commissioner has falsely stated in his report that the pathway runs through the petitioners' land and extends up to the said temple. This is wholly incorrect.

1.4) The petitioner further submits that the rough sketch filed by the Advocate Commissioner is also false and misleading. The Commissioner has repeatedly and incorrectly mentioned that the alleged pathway runs across the petitioners' property and reaches the respondents' land, with an intent to mislead this Hon'ble Court. In addition, the Commissioner has made contradictory statements in his report. At one place, he has mentioned that purambokku land lies to the west of the suit property, but elsewhere he has described the same portion as "Varattaru". Such contradictions show that the report lacks clarity and reliability, and the Commissioner has failed to report the true and correct state of affairs before this Hon'ble Court.

1.5) The petitioner further submits that the commissioner report is contrary to the truth and to the physical features on ground. The branches of the banyan tree in the said portion are spread at a height of about 4 feet above the stone and earth mound. When such obstruction exists, it is wholly incorrect for the Commissioner to state that vehicles are passing through that portion. Further, the Commissioner has made contradictory statements in his report initially mentioning that the branches of the

banyan tree are 11 feet above the ground level, and thereafter altering it to 7 feet. These contradictions clearly show that the Commissioner has not placed the true facts before this Hon'ble Court and has suppressed material facts while filing his report.

1.6) The petitioner further submits that the advocate commissioner has also stated in his report that a pathway runs along the river adjoining the suit property. Such inconsistent statements have created confusion as to whether the alleged pathway runs over the petitioners' property or outside it. It is settled that a Commissioner is appointed to assist the Court by presenting the actual physical features of the property, since the Court itself cannot inspect the site. Therefore, the Commissioner's report ought to clarify the real position and aid the Court in determining the dispute. However, in the present case, the Commissioner's report is misleading, contradictory, and has been filed in favour of the respondents by concealing the true facts. Hence, the report deserves to be set aside.

1.7) The petitioner further submits that the Commissioner has further mentioned in his report that there is a banyan tree to the east of the petitioners' property and that a mound of earth lies near the alleged cart track. The sketch/map filed along with the report also incorrectly depicts the physical features. These statements are factually false. The Commissioner ought to have reported that no pathway exists in the petitioners' property and that there is no possibility of such a pathway due to the banyan tree and the natural obstructions. Instead, by ignoring the memorandum submitted on behalf of the petitioners and by not conducting a proper inspection, he has filed a one-sided report. Since the Commissioner has suppressed material facts and filed a misleading report, reliance on such report would cause serious and irreparable prejudice to the petitioners/plaintiffs. Therefore, the report of the Advocate Commissioner is liable to be scrapped.

II) The Contention of the Respondent/Defendant in brief :

2.1) The respondent humbly submits that the petitioners' contentions are false and baseless, and that the petitioner is liable to prove his claims. Except for those specifically admitted by the respondent, all the averments are denied, and the burden of proof lies on the petitioner. The petition is liable to be dismissed as devoid of merits.

2.2) The petitioners/plaintiffs have filed the present case by suppressing material facts and furnishing false information. For a long period, the defendants have been obstructed from using the access road to the utility. In order to conceal the existence of the access road in the suit property and by giving incorrect property details. They further sought the appointment of an Advocate Commissioner, who was appointed only after due consideration by this Hon'ble Court. Even after such appointment, the petitioners/plaintiffs deliberately delayed the process by not cooperating with the inspection of the suit property. On 01.07.2017, when the Advocate Commissioner attempted to inspect and measure the suit property, the petitioners prevented him from carrying out the measurement and created an obstruction. Consequently, an order had to be obtained directing that the suit property be measured with the assistance of the police department. Thereafter, on 19.08.2017, the measurement was finally completed with the help of a land surveyor and revenue officials.

2.3) The Advocate Commissioner thereafter filed his report and plan on 30.10.2017. The matter was listed for trial on 10.04.2019, and is now pending for cross-examination of the plaintiff. However, instead of cooperating with the proceedings, the petitioners have been deliberately causing delay in several ways. The present petition to set aside the Commissioner's report has been filed with malafide intent, only to further drag the proceedings.

2.4) The petition filed by the petitioners to scrap the Advocate Commissioner's report is wholly unsustainable. If the petitioners truly had valid objections to the Commissioner's report, they ought to have raised them immediately after the filing of the report on 30.10.2017. Having remained silent for nearly two years and allowing the matter to reach the stage of trial on 10.04.2019, the petitioners cannot now seek to scrap the report. This belated petition has been filed purely for convenience and with the ulterior motive of harassing the respondents and prolonging the litigation.

2.5) If the Commissioner's report is rejected as prayed for by the petitioners, the Court will be deprived of the true factual position on the ground. Such rejection would only result in irreparable hardship and prejudice to the respondents, while enabling the petitioners to unjustly benefit from their own wrongful conduct.

2.6) It is in fact the petitioners who have filed the present case by concealing the existence of the long-standing pathway and making false allegations. They have repeatedly disobeyed Court directions, obstructed the Commissioner from performing his duty, and prevented a fair inspection of the suit property. The measurement and identification of the suit property were ultimately carried out by the Advocate Commissioner with the assistance of police authorities, owing to the petitioners' non-cooperation. The conduct of the petitioners is lawless and deliberate. The present petition is yet another attempt made with malafide intent to misuse the process of law to their advantage. From the inception of the suit, they have shown no bona fide intention to resolve the dispute but only to delay proceedings. Hence, the petition deserves to be dismissed in limine.

III) Points for Consideration :

Whether the petitioners are entitled to relief as prayed for ?

IV) Discussion :

4.1) Heard both side rival submissions and perused available material record, it is seen that this petition is filed by the petitioner/plaintiff under Section 151 of CPC to scrap the Commissioner Report and plan filed in I.A.No: 269/2015, and thereby render justice. No oral and documentary evidence adduced on both sides.

4.2) Learned counsel for the petitioners submitted that the Advocate Commissioner's report is wholly unreliable, misleading, and contrary to the physical features on ground. It was argued that the Commissioner ignored the memo filed on behalf of the petitioners and, wrongly described purambokku land as "Varattaru," and falsely reported the existence of a pathway across the petitioners' property leading to VEDIYAPPAN KOVIL, when in fact no such pathway exists. Counsel pointed out that the report is inconsistent and contradictory, as it variously describes the boundaries and even alters the height of the branches of a banyan tree, despite the presence of natural obstructions such as a 100-year-old tamarind tree and a mound of earth, which make vehicular passage impossible. The sketch/map filed along with the report was also alleged to be false and misleading. It was further submitted that instead of presenting the true state of affairs, the Commissioner has suppressed material facts, acted in favour of the respondents, and thereby failed in his duty to assist the Court. Hence, the report deserves to be scrapped to prevent irreparable prejudice to the petitioners.

4.3) Learned counsel for the respondents contended that the petitioners, having suppressed material facts, concealed the long-standing access pathway, furnished false details, and even obstructed the Commissioner's inspection, cannot now seek to scrap the report after nearly two years of silence. The Commissioner, with police and revenue assistance, duly filed his report on 30.10.2017, which reflects the true ground reality. Scrapping it without any prayer for reinspection or appointment of

a new Commissioner would seriously prejudice the respondents and unjustly benefit the petitioners. Hence, the petition is not maintainable and deserves outright dismissal.

4.4) This Court has carefully considered the grounds raised by the petitioners to scrap the Advocate Commissioner's report, Ex.C.1. The first ground is that no pathway exists in the suit property and that the Commissioner has falsely reported the presence of one. On examining Ex.C.1, it is clear that a cart track has long existed through the suit property and is being used by the defendants and their vehicles. The report also makes it clear that there is no other access available to the defendants. The rough sketch and photographs filed along with the report also confirm this. Hence, this ground cannot be accepted.

4.5) The second is that the physical features of the property were not recorded. However, Ex.C.1 report and rough sketch clearly describe the trees, tamarind tree, sand mound, boundaries, motor room, well and houses of both parties. This ground is therefore without merit.

4.6) The third is that the Commissioner did not act on the memo filed by the petitioners' counsel. However, on a perusal of Ex.C.1, it is evident that the memos submitted by both counsels were annexed and duly referred to in the report. The record further shows that during the survey inspection, both counsels were present and their signatures were obtained, confirming that the instructions were considered. Hence, this contention is unfounded.

4.7) The fourth is that the Commissioner gave contradictory statements about the branches of the tamarind trees. On careful reading, Ex.C.1 shows that the longer branches were found at 11 feet height from sand mound and the shorter branches at about 7 feet. The next ground is that the western boundary was wrongly described.

However, the report and sketch clearly record it as porambokku varattaru and consistently mention the same. Hence, there is no error.

4.8) Finally, Ex.C.1 confirms that a cart track runs through the plaintiffs' land and connects to the defendants' land, which has been in long use. This finding is supported by both the sketch and report. The learned counsel for the petitioner relied on CRP (MD) No.2341 of 2012 (PD). However, the facts of that case are entirely different. There, the Advocate Commissioner inspected the property without giving due notice to the petitioner's counsel and went beyond his scope by recording findings on easementary rights, when his role was limited to noting physical features. In the present case, however, the Advocate Commissioner was specifically directed to inspect the suit property along with a qualified surveyor, measure the property, and file a report. Hence, the cited decision is not applicable.

4.9) It is also to be noted that the case is already at the stage of PW1 cross-examination, which is an advanced stage of trial. If the petitioners have objections, they can always put questions to the Commissioner during cross-examination. Filing this petition at this belated stage has unnecessarily delayed the proceedings and kept the suit pending for long. In view of the above, this Court finds that the Commissioner's report reflects the true factual position and that the objections raised are baseless. The petition is liable to be dismissed.

V) Decision:

In Result,

This petition in I.A.No: 763/2019 is 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 29th day of August, 2025

DISTRICT MUNSIF, HARUR

Annexure:

Petitioner side Evidence and Exhibits: Nil

Respondent side Evidence and Exhibits: Nil

Court Exhibits : Ex.C.1

EX.C.1	Advocate Commissioner report and plan	Original
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DISTRICT MUNSIF, HARUR

Fair order

IA.No.763/2019

in

IA.No.269/2015

in

OS.No.48/2014

29.08.2025