

IN THE COURT OF DISTRICT MUNSIF, HARUR

Present: Tmt. SRI MATHURA S, LL.M.,

DISTRICT MUNSIF, HARUR

Friday, 31st day of October 2025

IA. No:02/20225

In

O. S. No:02/2025

C.Dhanasekaran

...Petitioner/Plaintiff

-Vs-

1.C.Ganesan

2.G.Suman

...Respondents/Defendants

This interlocutory application came for final hearing on 23.10.2025 before me in the presence of Adv.Mr.G.Radhakrishnan,M.Com.,B.L, for Petitioner/Plaintiff and Adv.Mr.C.Chitrarasu,M.A.,B.L., for the Respondents/Defendants. 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 was filed by the Petitioner/Plaintiff under **ORDER 26 RULE 9** seeking relief of appointment of advocate commissioner to note down the physical features of petition mentioned item no 1 property as per partition deed dated 05.07.1985 with a qualified surveyor to measure the same and submit a detailed report with a plan drawn to scale.

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

1.1) The petitioner humbly submits that the petition item No.1 property (suit item No.1 property) is a cart track. Through the partition deed No.2091/1992 dated 05.07.1985, the said cart track was jointly allotted to the petitioner, the respondent/1st defendant, their father Chinnusamy Gounder, mother Pavayeeammal, and brother Sekar. The petitioner became entitled to the suit item No.2 property through the above partition deed as B-Schedule property. The petitioner can reach his item No.2 property only through the item No.1 cart track. Except for the said cart track, there is no other pathway for the petitioner to access his land in item No.2 property.

1.2) The petitioner humbly submits that the above cart track is situated in Boothinatham Village, adjoining the Mampadi river bank. It runs northwards through the lands in S.Nos. 23/7, 23/5, 23/1, 7, and 6/2B, and ultimately reaches the petitioner's land in S.No. 6/2A. The lands in S.Nos. 23/7, 23/5, 23/1, and 6/2B belong to the 1st respondent under the same partition deed dated 05.07.1985 as C-Schedule property. Though these survey numbers were allotted to the 1st respondent, the said partition deed clearly mentions a 15-feet-wide common cart track. Hence, the petition item No.1 property is a common pathway jointly belonging to the petitioner and the respondents.

1.3) The petitioner humbly submits that subsequently, the respondents executed another partition deed dated 05.07.2019, through which the petition item No.1 property was allotted to the 2nd respondent. After acquiring the said property, the 2nd respondent mutated his name in the revenue records, and S.No. 6/2 was subdivided as S.No. 6/2B, for which the 2nd respondent obtained patta. Though the revenue records show the item No.1 cart track in the name of the 2nd respondent, the same has always been jointly used and enjoyed by the petitioner, the 1st respondent, and their brother Sekar.

1.4) The petitioner humbly submits that on the western side of the cart track lies S.No. 9/3 belonging to the 2nd respondent, and adjacent to it lie S.Nos. 9/2 and 8/2B belonging to the petitioner. The 2nd respondent has been demanding the petitioner to sell his land in the said survey numbers for the past eight months at a meagre price. As the petitioner refused to sell, the respondents obstructed his use of item No.1 pathway, claiming that the revenue records stand in the name of the 2nd respondent.

1.5) The petitioner humbly submits that as the petitioner and respondents are brothers, they initially attempted to settle the issue through a village panchayat. However, no amicable solution was reached. On 18.08.2024, the respondents obstructed the petitioner and his family members from using the petition item No.1 pathway. The petitioner, with the help of villagers and well-wishers, resisted the obstruction. However, the petitioner apprehends that the respondents may again attempt to interfere with or alter the physical features of the item No.1 property.

1.6) Hence, the petitioner submits that a prima facie case and the balance of convenience lie in his favour. He therefore prays that this Hon'ble Court may be pleased to appoint an Advocate Commissioner, along with a qualified surveyor, to inspect and measure the property as per the partition deed dated 05.07.1985, and to submit a detailed report and plan. Otherwise, the petitioner would be put to irreparable loss and hardship.

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 respondents admit the relationship between the parties and state that the suit properties are common properties belonging to the petitioner and the 1st respondent. It is only through the suit property that both the petitioner and the respondents have access to their respective shares. The respondents have never obstructed the petitioner's use of the suit property. Except for the said property, there is no other pathway for either the petitioner or the respondents to reach their respective lands.

2.3) The respondents humbly submit that the 2nd respondent is employed out of station and is the only son of the 1st respondent. The respondents fenced their property nearly ten years ago. However, the petitioner's son, Dhanasekaran, aged about 40 years, damaged the fencing and uprooted mango trees using a JCB, thereby disturbing the respondents' peaceful possession and enjoyment.

2.4) The respondents further submit that they attempted to settle the dispute through village elders, but the petitioner and his son failed to attend the mediation, with an intention to grab the respondents' property. For the past ten years, the respondents have been trying to sell their property, but the petitioner has been creating one reason or another to prevent potential purchasers from buying it.

2.5) The petitioner has filed this false suit only to harass the respondents. The respondents never claimed any right over the petitioner's property. On the contrary, the petitioner, with the intention of encroaching upon the respondents' property, has extended his occupation into the poramboke land adjoining his land and damaged the same. It is, in fact, the petitioner and his son who have been continuously causing trouble to the respondents and disturbing their peaceful enjoyment of the property. Hence this petition deserves to be dismissed.

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 relief of appointment of an Advocate Commissioner, along with a qualified surveyor, to inspect and measure the property as per the partition deed dated 05.07.1985, and to submit a detailed report and plan drawn to scale.

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

4.3) It is seen from the pleadings and submissions of both sides that the relationship between the parties is admitted. The nature and existence of the suit properties are also not in dispute. Both parties have agreed that it is only through the suit item No.1 property, namely the cart track, that they are able to access their respective shares of land.

4.4) In view of this admitted position, it has become necessary to ascertain the actual physical features, location, and extent of the said cart track for a proper adjudication of the issues involved in this case. The measurement of the cart track by a qualified surveyor, under the supervision of an Advocate Commissioner, will assist this Court in determining the factual position at the time of trial. Accordingly, this petition is allowed, and an Advocate Commissioner is appointed to inspect the petition item No: 1 property along with a qualified surveyor, to measure and note down the physical features as per the partition deed dated 05.07.1985, and to submit a detailed report and plan before this Court.

V)Decision:

In result,

This petition is allowed and the court appoints Advocate Ms.V.Sushmitha (M.S.No: 4499/2023) as Advocate Commissioner to inspect the petition item No: 1 property, note physical features, and measure the same with the help of a qualified surveyor as per the partition deed dated 05.07.1985. The petitioner shall pay Rs. 7,500/- as remuneration directly to the Advocate Commissioner, who shall file a memo upon receipt. The Advocate Commissioner shall, after giving notice to both parties, inspect the property and strictly file a detailed report with a rough sketch within six (6) weeks.

Dictated to the Steno-Typist, typed by her in computer,
corrected and pronounced by me in open Court,
on the 31st day of October, 2025

DISTRICT MUNSIF, HARUR

Annexure:

Petitioner side Evidence and Exhibits : Nil

Respondent side Evidence and Exhibits : Nil

DISTRICT MUNSIF, HARUR

Fair order

IA.No.02/2025

in

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Dated:31.10.2025