

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
ERODE.**

PRESENT : THIRU. G. ASHOK PRASATH, B.A., B.L., M.S.E.N.,
I ADDITIONAL SUBORDINATE JUDGE, ERODE.

On Wednesday, the 11th day of June 2025

On Thiruvalluvar varudam 2056, Tamil Visuvavasu Year, Vaikasi Thingal 28th day

I.A.No.6/2024

in

O.S.No.744/2023

Minor Sarvesh Pravit

Represented by his grand father
and Guardian V.Ravichandran

..Petitioner/Plaintiff

/vs/

R.Baby Lakshmi

...Defendant/Respondent

This petition has come up on 11.06.2025 for final hearing before this court in the presence of Thiru.S.Veerappan, learned advocate for the petitioner, and Thiru.T.Senthilkumar, learned advocate for the respondent and upon hearing both sides, on perusal of available materials on record and having stood over for consideration till this day, this court delivers the following:-

ORDER

1. This Petition has been filed Under Order 26 Rule 9 and Section 151 of CPC that the petitioner to appoint an advocate commissioner with the assistance of the qualified engineer of erode city Municipal Corporation to ascertain the value of the building and its age and also to note down the physical features of the suit property in and around and pass such other suitable order and this render justice.

2. The Brief averments of petition filed by the petitioner:-

3. It is stated that the petitioner filed the suit for partition in respect of ½ shares in the B schedule property. The petitioner's father worked at Abudhabi and he met an accident and died in 2015. The petitioner's mother received the 36 lakhs compensation amount due to the death of the petitioner's father AT Swaminathan.

The petitioner's mother purchased the suit property in 2016 through a registered sale deed by way of the above-mentioned compensation amount. The respondent made the recitals and noted Villai vedu but the suit property is a terraced building with 1st floor and total construction is 835 square feet house. To prove the suit property is a terraced building, the appointment of a Court commissioner is necessary with the assistance of the qualified Engineer, City Municipal Corporation, Erode to ascertain the suit property and its age and present value of the terraced building with also having to note down the physical features in and around. Already the petitioner filed OS.No:205/2018 before the Principal Munsif Court in which this petitioner didn't file the document in that above-mentioned suit. To prove that the suit property is one terraced building with the 1st floor for which the petitioner produced the notice issued by the City Municipal Corporation, Erode dated 2.9.2016 and 15.9.2016 to the defendant/respondent. Hence the petition.

4. The Brief averments of counter filed by the respondent are as follows:-

5. Except for those that specifically admitted herein as true, this respondent denies all averments in the affidavit.

6. It is stated that the respondent's father who has shown himself as the next friend of the minor, has filed the suit, giving the description of the property as found in the plaint and has specifically stated its value. The property when was purchased as a tiled house and subsequent to the purchase, this respondent after removing the tiled roof and putting up an RCC roof and the first floor over the same and residing in the said house with her minor son.

7. Further, the respondent is not challenging the nature of the property that it is an RCC terraced building, therefore it is absolutely unnecessary to ascertain the nature of the property. So far as the value of the property is concerned, this respondent's father himself has given a value and the value of the property is not a dispute in the suit. It is not stated as to what purpose the petitioner seeks for ascertainment of the value of the property at this stage. It is obvious to drag on the

proceedings and avoid trial, without valid reasons, the petitioner seeks for appointment of a commissioner for the purpose stated in the petition. The appointment of a commissioner cannot be used to collect evidence. The object of order 26 CPC cannot be invoked mechanically without any actual purpose. The respondent already filed the written statement and is ready to proceed with the suit. The father of the minor filed the suit on behalf of the minor in OS.No:205/2018 on the filed of DMC Erode, claiming in the suit property, that the minor is entitled to a common half share. After an elaborate trial, the said suit was dismissed in respect of the present suit property, holding that the present suit property is the separate property of this respondent but the same was suppressed by the petitioner and filed this vexatious suit, such practice has to be deprecated strongly. Hence this petition is liable to be dismissed with cost.

8. Heard Both sides, No oral and documentary evidence adduced on either side, Whether the petition deserves to be allowable or not?

On Point:

9. The petitioner side argued that the petitioner filed the suit for partition in respect of $\frac{1}{2}$ shares in the B schedule property. The petitioner's father worked at Abudhabi and he met an accident and died in 2015. The petitioner's mother received the 36 lakhs compensation amount due to the death of the petitioner's father AT Swaminathan. The petitioner's mother purchased the suit property in 2016 through a registered sale deed by way of the above-mentioned compensation amount. The respondent made the recitals and noted Villai veedu but the suit property is a terraced building with 1st floor and total construction is 835 square feet house. To prove the suit property is a terraced building, the appointment of a Court commissioner is necessary with the assistance of the qualified Engineer, City Municipal Corporation, Erode to ascertain the suit property and its age and present value of the terraced building with also having to note down the physical features in and around. Already the petitioner filed OS.No:205/2018 before the Principal Munsif Court in which this

petitioner didn't file the document in that above-mentioned suit. To prove that the suit property is one terraced building with the 1st floor for which the petitioner produced the notice issued by the City Municipal Corporation, Erode dated 2.9.2016 and 15.9.2016 to the defendant/respondent. Whereas the other side stated that the respondent's father who has shown himself as the next friend of the minor, has filed the suit, giving the description of the property as found in the plaint and has specifically stated its value. The property when it was purchased as a tiled house and subsequent to the purchase, this respondent removed the tiled roof and put up an RCC roof and the first floor over the same and residing in the said house with her minor son.

10. The respondent side argued that the respondent is not challenging the nature of the property that it is an RCC terraced building, therefore it is absolutely unnecessary to ascertain the nature of the property. So far as the value of the property is concerned, this respondent's father himself has given a value and the value of the property is not a dispute in the suit. It is not stated as to what purpose the petitioner seeks for ascertainment of the value of the property at this stage. It is obvious to drag on the proceedings and avoid trial, without valid reasons, the petitioner seeks for appointment of a commissioner for the purpose stated in the petition. The appointment of a commissioner cannot be used to collect evidence. The object of order 26 CPC cannot be invoked mechanically without any actual purpose. The respondent already filed the written statement and is ready to proceed with the suit. The father of the minor filed the suit on behalf of the minor in OS.No:205/2018 on the filed of DMC Erode, claiming in the suit property, that the minor is entitled to a common half share. After an elaborate trial, the said suit was dismissed in respect of the present suit property, holding that the present suit property is the separate property of this respondent but the same was suppressed by the petitioner and filed this vexatious suit, such practice has to be deprecated strongly.

11. In rival contentions of both sides on the above aspect of grounds, the

petitioner side stated that in his petition itself that the suit property as villai veedu now the same modified as RCC terraced building which was also admitted by the respondent side, further in support of that the petitioner side mentioned in his petition that the City Municipal Corporation, Erode issued the notice dated 2.9.2016 and 15.9.2016 to the defendant/respondent in respect of the suit property. It is clear that the suit property is the RCC terraced building which cannot be denied by the petitioner side because the same was mentioned above and the same was reflected in the petition as well as in the counter filed by the respondent, therefore admitted facts need not be proved as per section 58 of the Indian Evidence Act. Further, the petitioner side also admitted that the value of the property as mentioned in the petition which was rightly pointed out by the respondent side, therefore what is the purpose of appointing the advocate/commissioner to note down the physical features for which there is no prompt reasons were mentioned in the petition because the petitioner's duty to explain the elucidate the matter in dispute in the suit property, therefore what is the necessity arises at this stage to prove the age of the value of the building of the suit property because the petitioner here seeking the relief of partition against the respondent, so what is the reason behind it, to prove the value of the building in respect of the core issue of the suit for which also no proper explanation from the petitioner side. Here in the instant matter, the petitioner admitted that OS.No:205/2018 which was filed before the DMC, Erode and the same was dismissed and further in the above suit, the respondent had a common half share in the suit property as reflected in the counter, so what the petitioner want to prove before the court on which aspect of ground for which there is no clarity in the petition. Even the other side is ready to conduct the trial proceedings and the same has been pending for the past three years, therefore, the other side pointed out that appointing the advocate/commissioner at this stage only as a collection of evidence that cannot be entertainable one because the petitioner simply mentioned value the age of the building in the suit property and note down physical features of the suit

property which is not sufficient to the subject matter of the core issue of the suit rather it is only to drag on the proceedings of the matter because there is no specific grounds that the respondent encroached the suit property and the same measurements or boundaries differs or else to ascertain the market value of the property but simply to note down physical features and value the age of building for what purpose and in what way to support the core issue of the matter for which no reasons given by the petitioner side. Here this Court relied upon Nagarajan v. Palanisamy CRP.No:2831/2022 dated 26.09.2022 Wherein Our Honourable Madras High Court held that If one of the co-owners made any improvement in the suit property, it is open to him to work out equities in final decree proceedings. Therefore, at this stage, the appointment of an Advocate Commissioner is not at all necessary. Further, taking into consideration the conduct of the revision petitioner in dragging the suit by filing various applications,

12. Therefore, there is no prima facie in the petition rather it is only for the collection of evidence. Keeping this matter in pendency of the suit by filing this kind of application only leads to delay in meeting the ends of justice for a just decision of the case. Given the above aspect of the reasons, this Petition stands dismissed and No cost.

As a result, this Petition stands dismissed and No cost.

Dictated to the Steno-typist and typed by him directly in the computer, corrected and pronounced by me in open court, on this the 11th day of June 2025.

I Additional Subordinate Judge,
Erode.

Petitioner and Respondent side Witness and Documents:

-Nil-

I Additional Subordinate Judge,
Erode.

Draft/Fair Order
I.A.No.6/2024 in
OS.744/2023
Dated: 11.06.2025
I ASJC, Erode.