

**IN THE COURT OF SUBORDINATE JUDGE OF PERUNDURAI**

**PRESENT: THIRU. M.ASHFAQ AHAMED,B.A.B.L.,  
Subordinate Judge, Perundurai.**

Tuesday, the 10<sup>th</sup> day of March 2026

**C.M.A.No. 2/2025**  
**CNR. NO: TNED11-000506-2025**

R. Saraswathi .... Appellant/Petitioner/Plaintiff

/vs/

1. K. Palanisamy  
2. K. Thangamuthu  
3. K. Palanisamy .... Respondents/ Respondents/Defendants

Civil Miscellaneous Appeal No.2/2025 against the fair and final order passed by the Learned District Munsif, Perundurai in I.A.No.3/2023 in O.S.No. 128/2023 dated 11.09.2025.

**BETWEEN**

R. Saraswathi .... Petitioner/Plaintiff

/vs/

1. K. Palanisamy  
2. K. Thangamuthu  
3. K. Palanisamy .... Respondents/Defendants

This Civil Miscellenous Appeal came up for final hearing before me on 23.02.2026 in the presence of Advocates Thiru.D.Senthilkumar., for Appellant, and Thiru.M.Senthilkumar., for 1<sup>st</sup> Respondent, Thiru. C.Subramaniam., for 3<sup>rd</sup> Respondent and 2<sup>nd</sup> respondent set exparte and upon hearing arguments of Both, perusing the documents and having stood over till this day for consideration, this

Court passed the following :

**Order**

I) The above Civil Miscellenous Appeal was filed by the Appellant/ Petitioner/ Plaintiff to set aside the fair and final order passed by District Musif, Perundurai in I.A.No.3/2023 in O.S.128/2023 and to allow the same with costs.

**II) The averments of the Petition filed by the Appellant/Petitioner/Plaintiff before the Trial Court is as follows:**

The Appellant has filed the suit for Permanent Injunction and other reliefs. The appellant filed an application for appointment of advocate commissioner to note down the physical features in and around the suit properties, to take measurements if necessary to file report and plan. The averments of the petition read as the suit property belongs to father of the petitioner Nachiappa gounder and brother then minor Muthusamy by way of registered partition dated 10.02.1967 allotted as C schedule. From the date of partition the father of the petitioner and his brother were in possession and enjoyment of the property. The suit property is an agricultural land irrigated by well water. The father and mother of the petitioner died intestate. The brother of the petitioner Muthusamy also died as bachelor on 12.03.2014 and as a sole legal heir the petitioner succeeded the property and in possession and enjoyment of the same. The revenue records were also mutated. The 1<sup>st</sup> defendant is having land on the south of suit property and 2<sup>nd</sup> defendant is having land on the east of suit property and 3<sup>rd</sup> defendant is having land on the north of suit property. The defendants have no manner of right, title or interest

over the suit properties. The plaintiff is a old lady and the defendants frequently disturb the possession and enjoyment of the property. The defendants 1 and 2 gradually disturb by obliterating the east west ridge on the southern and northern side and frequently quarreled with the petitioner. The 3<sup>rd</sup> defendant also disturb the possession by not permitting the plaintiff to take water from the common well and the common cart track. The defendants attempted to trespass into the property and hence the suit was filed. The physical features in and around the suit property was very much relevant to dispose the dispute effectively and the report of commissioner would minimize the oral and documentary evidence and hence the petition.

**III) The Counter filed by 1<sup>st</sup> respondent/ 1<sup>st</sup> defendant before the Trial Court read as:**

The petition is not sustainable. The suit is for Permanent injunction. The 1<sup>st</sup> respondent is the absolute owner of the property to an extent of acre 3.09 in S.F.No.437 and he was in possession and enjoyment of the property within specific boundaries and cultivating coconut trees. The 1<sup>st</sup> respondent has also fenced the property with barbed wire on all four boundaries and there is no east west ridge in existence. There is no necessity for appointment of advocate commissioner and no purpose will be served. The petition has been filed only for collection of evidence which is not maintainable.

**IV) The counter filed by the 3<sup>rd</sup> respondent/ 3<sup>rd</sup> defendant read as:**

The 3<sup>rd</sup> defendant is enjoying the property purchased by his father through

registered sale deed dated 25.08.1953 and he is entitled to the properties in S.F.No.437 and 438 which was later sub divided as R.S.No.135/4. This respondent is also having 1/4 share in the common well and as per the partition deed dated 05.02.1953 a 9 feet common cart track was established and he is exercising his right over the same. A channel course was established from the common well to irrigate the lands allotted to the respective parties. But the petitioner's son objected to fix the boundary stone. There is no enough percolation in the common well and no need for common channel course. To fix the boundary stone the 3<sup>rd</sup> respondent has filed a suit in O.S.12/2015 before this Court to fix the boundary line as per the title deeds and permanent injunction against the petitioner and the same was decreed. The petitioner by suppressing the said fact has filed the present suit and prays for dismissal.

**V) Points for consideration is**

**1) Whether the Trial Court was correct in dismissing the application as the suit is one for permanent injunction?**

**2) Whether the order of the Trial Court is liable to be interfered?**

**V) POINTS:**

a) Heard. Records perused. The learned counsel for the appellant would submit the Trial Court has failed to apply the principles of law in proper perspective and dismissed the application on the sole ground the appointment of advocate commissioner would amount to collection of evidence and the petitioner has to prove her case through documents and therefore the appointment of advocate

commissioner is not warranted which is not correct and would submit the order of the Trial Court is liable to be set aside.

b) On the other hand the learned counsel for the 1<sup>st</sup> respondent would submit the 1<sup>st</sup> respondent is enjoying the property within four boundaries by laying barbed fence and there was no interference by 1<sup>st</sup> respondent to the enjoyment of property by the petitioner and therefore the order of Trial Court in dismissing the application does not requires interference. The learned counsel for the 3<sup>rd</sup> respondent though would support the dismissal of application by Trial Court would submit that considering the nature of the application the 3<sup>rd</sup> respondent has no objection for appointment of advocate commissioner to note down the physical features of the property.

c) This Court considered the submissions of both sides and perused the material records. Admittedly the appellant has filed the suit for Permanent Injunction. The reading of the petition averments would show the petitioner is in possession of the suit property which was allotted to his father and brother as per the partition deed dated 10.02.1967 and after their death she was in possession of the property as the sole legal heir. It is also the pleadings and averments of the petitioner that on all three sides of her property, the properties of respondents 1 to 3 situate. The appellant has specifically pleaded the respondents 1 and 2 are disturbing her possession by obliterating the east west ridge on the south and northern side and 3<sup>rd</sup> respondent is disturbing her possession by not permitting to take water from the common well and use common cart track. The 1<sup>st</sup> respondent

has pleaded that he was enjoying an extent of acre 3.09 in S.F.No.437 within four boundaries and fenced on all sides. The 3<sup>rd</sup> respondent has pleaded that he is entitled to the property in S.F.No.437 and 438 and was having common share in the well and also entitled to use the common cart track. The property of the petitioner also situates in S.F.No.437 and 438 within four boundaries to an extent of acre 1.38 with 1/4 share in the well. The boundaries of the appellant also shows the existence of north- south pathway on the west and ridge on the north of the property.

**d)** The reading of the order of the Trial Court would show the Trial Court by merely referring to the provision Order 26 Rule 9 CPC and considering the application filed by appellant is for collection of evidence has dismissed the application. The Trial Court has not assigned any reasons with regard to the specific pleadings put forth by the appellant regarding the nature of obstructions. The Trial Court has not least conducted any enquiry as regard the cause and necessity for the appointment of advocate commissioner. The appellant has pleaded the respondents 1 and 2 are obliterating the ridge separating the property of appellant and the respondents. The Trial Court on the assertions of 1<sup>st</sup> respondent that his property was fenced has come to the conclusion that there cannot be any encroachment which is not correct.

**e)** The prime request of the appellant is to note down the physical features of the property. As already stated the four boundaries and averments of the respondents in the counter would disclose the existence of ridge, common pathway, common well extra. When the 1<sup>st</sup> respondent deny the existence of ridge and

specifically assert that his property is fenced and on all sides, the ridge is obliterated or not could be resolved only if the property of 1<sup>st</sup> respondent is measured to find out whether the fencing of the property to an extent of acre 3.09 is exclusive of the ridge and this can be brought to the knowledge of the Court only by the appointment of advocate commissioner.

f) The advocate commissioner if appointed would be able to visit the suit property, with the help of surveyor, measure the same and locate it and also note down the features in existence in the property. Noting down the physical features would not amount to collection of the evidence. It is also needless to mention that in a suit for injunction the dispute pertaining to a portion of adjoining lands alleged to be encroached or attempted to be encroached and when the respondents deny, the best evidence with regard to obliteration or encroachment can be found out only by the appointment of advocate commissioner. The appointment of advocate commissioner shall not prejudice the parties and appointing the advocate commissioner to visit the property, note down the physical feature and taking out measurements if required with the assistance of surveyor would only assist the Court. The report and plan of the advocate commissioner would enable the Court for the purpose of arriving at a fair decision on the facts of the case.

g) The appellant has filed the application for appointment of advocate commissioner even at the time of filing of suit in the year 2023 and Trial Court ought to have considered the scope of application in proper perspective. In the facts of the case when serious allegations about encroachment and interference was

pleaded by the appellant, the Trial Court ought to have considered the same and should have appointed the advocate commissioner. The perusal of records would show the Trial Court has failed to exercise the discretion judicially and accordingly this Court is inclined to allow the appeal and the points are answered in favour of the appellant.

**In the result, this Civil Miscellaneous Appeal is allowed and the order passed by the Learned District Munsif, Perundurai in I.A.No.3/2023 in O.S.No.128/2023 dated 11.09.2025 is set aside. The Trial Court is directed to appoint an advocate commissioner within a period of two weeks from the date of receipt of a copy of this Order, by directing the advocate commissioner to inspect the property and file a report within a period of one month. No costs.**

Dictated to the Steno Typist, typed by her directly in computer, corrected and pronounced by me in the open court this the 10<sup>th</sup> day of March 2026.

**Subordinate Judge,  
Perundurai.**

Both side witnesses and Exhibits – Nil

**Subordinate Judge,  
Perundurai.**

**Copy to :**

The District Munsif, Perundurai.

DRAFT/FAIR ORDER

C.M.A.No. 2/2025

Date:10.03.2026

Sub Court, Perundurai.