

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI  
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.  
District Munsif, Uthangarai**

On this Tuesday, the 30th day of April 2024

**I.A.No. 04 of 2024 in O.S.No. 06 of 2024**

TNKI13-000014-2024

1. Thirumal
2. Elavarasan
3. Ashokan
4. Prasanth
5. Chandirasekar
6. Madheswaran
7. Munusami
8. Saravanan
9. Theerthagiri
10. Thirumal
11. Tamilarasan
12. Selvi
13. Kalaiselvi
14. Siva
15. Saravanan
16. Malar
17. Palani
18. Moorthi
19. Madhesh
20. Murugesan
21. Saamu
22. Rathinavel

...Petitioners / Plaintiffs

/versus/

1. Janakiraman
2. Balaji

...Respondents / Defendants

This interlocutory application came up before this Court on 30.04.2024 for final hearing in the presence of advocate Thiru. G. Vajjiravel, the learned counsel for the petitioners and advocate Thiru. N. Devendiran, the learned counsel for the



respondents and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

**ORDER**

The application has been filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for appointing of advocate commissioner to inspect and measure the the suit property and note down the physical features with the aid of the Village Administrative Officer and a qualified surveyor.

***The averments of the petitioners in brief:***

1. The petitioners aver that the suit properties are Natham lands and aver that a cart pathway in the suit properties are being used and enjoyed by the petitioners and public for generations and the petitioners are in occupation of the houses built in S.Nos. 340, 343, 345. The petitioners aver that the suit properties are Natham properties and aver that the respondents interfered with the usage of the cart pathway by attempting to construct houses in the suit property on 10.02.2024 and when the petitioners demanded restraint, the respondents pursued the attempts to make construction. The petitioners aver that the respondents are attempting to make encroachments, and hence, it is necessary to appoint commissioner to inspect the suit properties and file report along with sketch.

***The averments of the respondents:***

2. The respondents deny the averments of the petitioners in toto and aver that the suit properties were originally poramboke lands and were subsequently occupied by the petitioners' grand father and grand mother and were reassigned under Natham settlement schemes and Pattas were issued for some properties. The respondents aver that the respondents attempted to construct house in one of such properties in the month of January and the 3<sup>rd</sup> petitioner is an engineer undertaking construction works



and the 2<sup>nd</sup>, 3<sup>rd</sup>, 11<sup>th</sup> petitioners approached the respondents seeking for the agreement to construct the house and the respondents refused the same. The 1<sup>st</sup> petitioner, who is the uncle of the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners, got aggrieved by the same and has instituted this suit with false averments. The respondent avers that the house of the 5<sup>th</sup>, 6<sup>th</sup> petitioners is situated in the eastern side of the suit property and the house of the 14<sup>th</sup> petitioner is situated in further east and the 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> petitioners are also in occupation of the same. The respondents aver that if the house is built upon the cart pathway, then the house of the 5<sup>th</sup>, 6<sup>th</sup>, 14<sup>th</sup> petitioners is also situated on the cart pathway and the petitioners have not objected to their construction and aver that there is no cart pathway in the land where the respondents are making constructions. The respondents aver that the constructions work have been completed before the institution of the suit and house warming function was also conducted on 15.04.2024, and hence, the suit is infructuous and it is liable to be dismissed. The respondents aver that there is no cause of action for this suit and the cause of action alleged is false and seek for dismissal of the application.

***Point for consideration:***

3. Whether this application is liable to be allowed?

***Evidence:***

4. Neither of the parties to this application has adduced any oral or documentary evidence.

***Discussion:***

5. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for perpetual injunction restraining the respondents from interfering with the cart pathway in the suit



properties by making any constructions. This application has been filed seeking to appoint a commissioner to inspect and note down the physical features of the suit properties. Admittedly, the suit properties are Natham promboke lands under the occupations of the petitioners and respondents. It is the case of the petitioners that the respondents are attempting to construct house in the pathway running in the suit properties and obstruct its usage by the petitioners and general public. On the other hand the defendants have also admitted that they are making constructions but refuted that there is no cart pathway in the area of construction. Further, the suit property has been admitted to Natham settlements by both parties and the dispute is regard to existence of cart pathway in the suit property and whether the respondents are making construction in the cart pathway. The issues that arise from the averments are upon the location of the constructions and existence of pathway in the topography. Considering the nature of averments, this Court is of considered view that any amount of oral or documentary evidence let in in the suit would not bring the true nature and characteristics of the cart pathway or the constructions made expect for an actual and local investigation of the suit property. Hence, this Court is inclined to allow this application.

***Result:***

***6. As a result, this application is allowed as follows:***

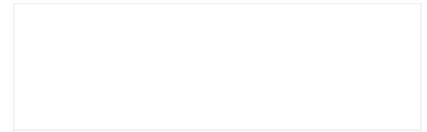
***(1) Advocate Thiru. B. Sathish (Ms. 2640/2007) is appointed as the commissioner to inspect the suit cart track to note down if the defendants have encroached the suit cart track and note down the measurements of encroachment if any.***

***(2) The commissioner shall inspect the suit property after due notice to all parties and with the aid of Village Administrative Officer and surveyor and file report and sketch.***



**(3) *The remuneration is fixed as Rs. 5000/- (Rupees Five-Thousand only) to be paid directly to commissioner by petitioner. For report call on 04.06.2024.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 30th day of April 2024.



District Munsif  
Uthangarai

**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses: Nil

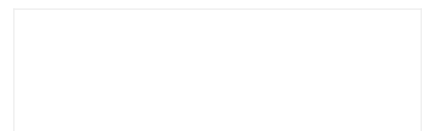
Petitioner side Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

**Court Documents:** Nil



District Munsif  
Uthangarai