

**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 Monday, the 21st day of August 2023

**I.A.No. 02 of 2020 in O.S.No. 51 of 2020**

TNKI13-000083-2020

1. Palaniyammal
2. Ganesan
3. Chinnakanni
4. Sampath
5. Kasthuri
6. Kala

...Petitioners / Plaintiffs

/versus/

1. Aadhimulam
2. Masila
3. Pachiyappan

...Respondents / Defendants

This interlocutory application came up before this Court on 21.08.2023 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioners and advocate Thiru. K. Vadivel, 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 issuance of commission to inspect and measure the suit properties to note down its physical features with the aid of a qualified surveyor and to file report along with sketch.

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

1. The petitioners herein are the plaintiffs in the suit instituted for declaration and injunction against the respondents. The petitioners aver that the suit properties and other properties originally belonged to Kuppa Gounder and the same were partitioned in the year 1974 and were allotted to his sons namely Aayiranga Gounder, Subramani (husband of the 1<sup>st</sup> plaintiff and father of the 2<sup>nd</sup> to 6<sup>th</sup> plaintiffs), Muniyan, Gopal, Ramasamy and the suit properties were allotted to the said Subramani as his share and all the revenue records such as Patta, Chitta were mutated to his name. The petitioners aver that the said Subramani died on 31.10.2000 leaving behind the petitioners as his legal heirs and the petitioners have been in exclusive possession of the suit properties since his demise. The petitioners aver that the share allotted to the said Aaiyaranga Gounder, which is situated on the northern side of the suit properties, was purchased by the son of another co-sharer Ramasamy namely the 1<sup>st</sup> respondent in the year 2004 and has been continuously disturbing the possession of the petitioners. The petitioners aver that the 1<sup>st</sup> respondent has no right or title over the suit properties but has been threatening to dispossess the petitioners from the suit properties, and hence, this suit for declaration of title and perpetual injunction has been instituted. The petitioners aver that neither the vendor of the 1<sup>st</sup> respondent namely the heirs of the Aaiyaranga Gounder nor the respondents have any right over the suit properties and the respondents attempted to efface the boundary ridges on the northern side of the suit properties. Hence, it is necessary to appoint the commissioner to inspect and measure the suit properties to note down its measurements and physical features such as the permanent boundary ridges for elucidating the true facts to the Court. Hence, the petitioners pray for allowing this application.

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

2. The respondents have filed memo adopting the written statement as counter to this application and the averments of the written statement read as follows. The respondents deny the averments of the petitioners in toto and aver that the petitioners have an alternate pathway about 300 mts. away to access the suit properties and have been falsely claiming right over the respondents' land. The respondents aver that the petitioners failed to pave pathway in their respective share and also have alternate pathway but have been unnecessarily disturbing the respondents with intention to extort unlawful gain from the respondents. The respondents have been in possession of the land purchased from the legal heirs of the Aaiyaranga Gounder namely Thiruvengadam, Balakrishnan and Palani and cultivating the same according to seasonal requirements with revenue records standing in their names. The respondents aver that the petitioners have grown envious of the development of the respondents and have instituted this false suit without any cause of action and suppressing the real facts. Hence, the suit is liable to be dismissed and this application is liable to be dismissed 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 evidence but the petitioners have marked Exhibits P1 to P6.

***Discussion:***

5. This Court heard both side and perused case records. This suit has been instituted for declaration of title of the petitioners and for perpetual injunction restraining the respondents from interfering with the petitioners' possession of the

suit properties. This application has been filed by the plaintiffs seeking issuance of commission to inspect and measure the suit properties to note down its physical features and file report along with sketch. A perusal of the pleadings of both sides would show that the dispute has arisen between two adjacent land owners regarding their boundaries. It is the case of the petitioners that the 1<sup>st</sup> respondent is the owner of the neighbouring land situated north of the suit properties which is admittedly a share allotted to one of the co-sharers namely Aayiranga Gounder which was purchased by the son of another co-sharer namely the 1<sup>st</sup> defendant. Hence, it is clear from the pleadings that dispute is regarding boundaries which is constituted of boundary ridges of the agricultural lands. The Honourable Madras High Court in the case of **B. Amutha v. Anandhi Sankara Narayanan**,<sup>1</sup> has observed as follows:

*“...27. In the said judgment, the learned Judge of High Court, Andhra Pradesh clearly states that when there is a dispute or issue with regard to identity of a property in a litigation it is necessary to appoint a Commissioner for localizing the property which may be even by taking necessary assistance from a qualified surveyor which will not amount to collecting evidence which is prohibited. The provision of Order 26 Rule 9 of CPC contemplates Commissions to make local investigations in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. But, provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules. The issue of the above provision appointment of a Commissioner to visit the suit property and also*

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1 B. Amutha v. Anandhi Sankara Narayanan., 2016 SCC OnLine Mad 23286.

*demarcate the property or properties taking assistance from a qualified surveyor and also note the physical features of the property in question is qualified.*

*28. Therefore, as per the judgment referred by the various Courts, I am of the consider view that absolutely there was no prejudice would be caused to the respondent/defendant by appointing an Advocate Commissioner for the purpose of inspecting the property and submit his report on physical features, measurements etc. In fact, though the Commissioner cannot decide the dispute, his inspection and report would helpful the Court in deciding the dispute. Hence, a local investigation is the best way to find out the position and the party, and coveting the evidence to place before the Court through local investigation by the Commissioner cannot be shut out of their right. Therefore, the appointment of Advocate Commissioner is maintainable in this case, even in the suit filed by the petitioner/plaintiff for permanent injunction and accordingly there is necessity for the interference by this Court and accordingly, I am inclined to set aside the order passed by the learned Principal District Munsif Court, Poonamallee, in I.A No. 1471 of 2012 in O.S No. 121 of 2012 dated 04.07.2013 and a direction is issued to the trial Court for appointing an Advocate Commissioner...”*

6. Further, the Honourable Madras High Court in the case of ***Shanmugathai v. Kamalammal***,<sup>2</sup> has held as follows:

*“...In yet another decision of this Court in the case of Vaithinattar v. Sakkubal Ammal reported in AIR 2004 Madras 419 it is held that in a suit for Declaration and Permanent Injunction, the dispute pertaining to portion of adjoining lands allegedly encroached by the defendants and the defendants denying that there was no such encroachment. This Hon'ble Court held that the best evidence in such case could be obtained only by the Appointment of advocate commissioner. Therefore in my*

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<sup>2</sup> Shanmugathai v. Kamalammal, 2017 (2) CTC 353.

*considered view, no prejudice will be caused to the respondent herein by appointing the advocate commissioner to visit the suit property along with the surveyor and note down the physical features. In fact, the advocate commissioner's report and plan would enable the court for the purpose of throwing more light or enlighten to arrive at a fair decision. Thus the appointment of commissioner is necessary and therefore the order of court below is liable to be set-aside....”*

7. The above dictum would clearly show that when there is a dispute between adjacent land owners regarding boundaries, appointment of commissioner to note down the physical features would be the best option to bring on record about the details of the topography of the suit properties. In the case at hand, the dispute is regarding the boundary ridges, and as such, any amount of oral or documentary evidence cannot sufficiently show or establish the same. Hence, this Court is of considered view that the appointment of advocate commissioner is proper in the case at hand. Hence, this Court is inclined to allow this application.

***Result:***

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

(1) *Advocate K. Kesavan (Ms. 2677/2014) is appointed as commissioner. The commissioner shall inspect the suit property after due notice and measure the same with aid of Village Administrative Officer and qualified surveyor.*

(2) *The commissioner shall note down the physical features of the suit property with specificity to the position of the ridges in survey numbers 6/1B1, 6/1B2.*

(3) *The commissioner shall file report along with sketch and photographs duly certified under section 65B of the Indian Evidence Act, 1872. The*

***remuneration is fixed as Rs. 5,000/- (Rupees Five-Thousand only) which shall be directly paid to commissioner by the petitioners.***

This order was dictated to the typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 21st day of August 2023.

District Munsif  
Uthangarai

**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses: Nil

Petitioner side Exhibits:

<b>Exhibit</b>	<b>Date</b>	<b>Document</b>	<b>Remarks</b>
P1	23.09.2020	Computer Chitta for Patta No. 74	Downloaded copy
P2	--	Houst tax receipts (6 in numbers)	Original
P3	--	Adangan extract	True copy
P4	12.09.2020	Encumbrance certificate	Certified copy
P5	02.02.2000	Death certificate of Subramani	Original
P6	02.03.2004	Legal heirship certificate	Certified copy

**Respondent side evidence**

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

**Court Documents:** Nil

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