

**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 Thursday the 21st day of September 2023

**I.A.No. 02 of 2022 in O.S.No. 95 of 2022**

TNKI13-000115-2022

Sivaraj

...Petitioner / Plaintiff

/versus/

1. Jayaraman
2. Sub-Registrar, Uthangarai
3. District Collector, Krishnagiri

...Respondents / Defendants

This interlocutory application came up before this Court on 20.07.2023 for final hearing in the presence of advocate Thiru. N. Devendiran, the learned counsel for the petitioner and advocate Thiru. M. Madheswaran, the learned counsel for the 1<sup>st</sup> respondent & later set *ex parte* for non-filing of counter and the 2<sup>nd</sup> & 3<sup>rd</sup> respondent set *ex parte* for non-appearance and upon hearing petitioner side 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 commissioner to inspect and measure the the suit property and note down its physical features with the aid of the Village Administrative Officer and a qualified surveyor.

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

1. The petitioner herein is the plaintiff in the suit instituted for perpetual injunction and aver that the suit property was originally a *poramboke* land which was occupied by the plaintiff and that he constructed a house in it. The petitioner avers



that recognizing the possession of the petitioner and others in the *poramboke* lands, the Tahsildar issued Patta No. 25 dated 29.08.1989 under Natham settlement scheme for old S.No. 28/1B with new S.No. 28/22 in the name of the petitioner for 120 sq.mt. The petitioner avers that none other than the petitioner has any right or title over the suit property and aver that the petitioner was also selected as a beneficiary for building house and the petitioner had built a house with empty space around in the suit property. The petitioner avers that the 1<sup>st</sup> respondent is the owner of the neighbouring property on the northern side and avers that the 1<sup>st</sup> respondent has been interfering with the possession of the plaintiff claiming that the southern portion is that of his property with intention to encroach in the southern portion and the petitioner has no objection for surveying his property by the 1<sup>st</sup> petitioner. The petitioner avers that the petitioner petitioned to the office of the 2<sup>nd</sup> respondent for surveying the suit property and no survey was under taken and avers that the 1<sup>st</sup> respondent has been attempting to lay foundation in the southern portion and the same was thwarted by the petitioner with the aid of village commoners. The petitioner avers that the 1<sup>st</sup> respondent is attempting to encroach the southern portion of the suit property, and hence, this suit for perpetual injunction and it is necessary that a commissioner to be appointed for the purpose of showing to this Court that the suit property is entitled to the petitioner alone and to avoid dispute with the 1<sup>st</sup> respondent. Hence, the petitioner prays for allowing this application.

***Non-appearance of the respondents:***

2. Sufficient opportunities were given to the 1<sup>st</sup> respondent to file counter and the 1<sup>st</sup> respondent failed to file counter and was set *ex parte* on 20.04.2023. Notices to the 2<sup>nd</sup> & 3<sup>rd</sup> respondents were duly served and were called absent with no representation and were set *ex parte* on 23.02.2023.



***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 the petitioner side 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 1<sup>st</sup> respondent from interfering with the possession of the suit property by the petitioner and for perpetual injunction restraining the 1<sup>st</sup> respondent from encroaching southern portion of the suit property and laying any foundation. This application has been filed by the plaintiff seeking appointment of commissioner to inspect the suit property and measure the same to note down the physical features of the suit property. It is pertinent to be note that the suit has been instituted for bare perpetual injunction and a vetting perusal of the affidavit filed in support of the application would show that there is a dispute between the parties regarding their boundaries. 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*

<sup>1</sup> B. Amutha v. Anandhi Sankara Narayanan., 2016 SCC OnLine Mad 23286.



*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 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 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 property. In the case at hand, the dispute is regarding boundaries, and as such, any amount of oral or documentary evidence cannot sufficiently show or establish the extent of the physical features of the suit property. Hence, this Court is of considered view that the appointment of 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:***

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



*(1) Advocate Thiru. Naveen (Ms. 8067/2022) is appointed as the commissioner and the commissioner shall inspect the suit property with the aid of Village Administrative Officer and a qualified surveyor and measure the same after due notice to the parties.*

*(2) The commissioner shall file report along with sketch and the remuneration is fixed as Rs. 5,000/- (Rupees Five-Thousand only) directly to be paid by the petitioner to the commissioner. For report call on 20.10.2023.*

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 September 2023.

District Munsif  
Uthangarai

**Annexure**

**Petitioner side evidence**

Petitioner side Witnesses & Exhibits: Nil

**Respondent side evidence**

Respondent side Witnesses & Exhibits: Nil

**Court Documents:** Nil

District Munsif  
Uthangarai