

**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 11th day of November 2024

**I.A.No. 04 of 2024 in O.S.No. 43 of 2017**

TNKI13-001235-2017

Saraswathi

...Petitioner / 2<sup>nd</sup> Defendant

/versus/

1. Maiyakannan
2. Venkatasalam

...Respondents / Plaintiffs

3. Govindan

...Respondent / 1<sup>st</sup> Defendant

This interlocutory application came up before this Court on 21.10.2024 for final hearing in the presence of advocate Thiru. S. Sasikumar, the learned counsel for the petitioner and advocate Thiru. N.K. Murugan, the learned counsel for the 1<sup>st</sup> & 2<sup>nd</sup> respondents and advocate Thiru. R. Shanmuga Sundharam, the learned counsel for the 3<sup>rd</sup> respondent 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 commissioner to inspect and measure the the suit property and note down its physical features with the aid of concerned Village Administrative Officer and qualified surveyor and file report along with sketch.

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

1. The petitioner herein is the 2<sup>nd</sup> defendant in the suit instituted by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for declaration and injunction and the 3<sup>rd</sup> respondent is the 1<sup>st</sup> defendant. The petitioner avers that the suit property in S.No. 27/2A2D is originally owned by the petitioner and the 3<sup>rd</sup> respondent and their siblings namely Janaki, Vimala,



Ramesh as ancestral property, and is under joint possession and enjoyment. The petitioner avers that the revenue records for the suit property stand in the name of the 3<sup>rd</sup> respondent in capacity of being the *Kartha* of the undivided joint family, which is also clearly mentioned in the alleged deed by which they have purchased. The petitioner avers that the whole extent of the suit property in S.No. 27/2A2D exists as an agricultural land with 3 large badam trees in it and no cart pathway as alleged by the 1<sup>st</sup> and 2<sup>nd</sup> respondents is present in the suit property. The petitioner avers that this was why the 1<sup>st</sup> and 2<sup>nd</sup> respondents have not filed any application seeking inspection by commissioner to prove the existence of the cart pathway. The petitioner avers that the suit property is under joint enjoyment by the co-sharers by cultivation according to seasons and avers that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have been accessing their properties in S.No. 27/2B2B and S.No. 27/2C3 only through the land belonging to one Ramesh Kumar s/o. Rajikrishnan and have also purchased the same from him by sale deed dated 09.11.2020 registered as Doc.No. 5725/2020 on the file of Sub-Registrar, Uthangarai and it has been sub-divided as S.No. 27/2C2B in the name of the 1<sup>st</sup> respondent with Patta No.366. The petitioner avers that the 1<sup>st</sup> and 2<sup>nd</sup> respondents have suppressed these facts and has been falsely prosecuting this suit. Hence, it is necessary to establish and prove that there is no cart pathway in the suit property and it is necessary to appoint commissioner to inspect the suit property and file report along with sketch and pray for allowing this application.

***The averments of the 1<sup>st</sup> and 2<sup>nd</sup> respondents in brief:***

2. The respondents deny the averments of the petitioner and aver that the cart pathway sale deed dated 07.04.2024 was executed since these respondents were in requirement of a cart pathway and the same was agreed by the 3<sup>rd</sup> respondent. The respondents aver that the cart pathway in the suit property is under usage since then, and due to the dispute arose between the 1<sup>st</sup> and 2<sup>nd</sup> respondents with the 3<sup>rd</sup> respondent regarding borewell, the petitioner has filed this application with false



averments. The respondents aver that this application for issuance of commission has been filed only to prolong the suit proceedings and there is no necessity for the commissioner to inspect the suit property. Hence, the 1<sup>st</sup> and 2<sup>nd</sup> respondents seek for dismissal of the application.

***No objection by the 3<sup>rd</sup> respondent:***

3. The 3<sup>rd</sup> respondent / 1<sup>st</sup> defendant represented no objection and endorsed the same.

***Discussion:***

4. 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. The suit has been instituted by the 1<sup>st</sup> and 2<sup>nd</sup> respondents for declaration of rights over the cart pathway in the suit property and for perpetual injunction restraining the 3<sup>rd</sup> respondent from interfering with the enjoyment of the cart pathway. This application has been filed by the 2<sup>nd</sup> defendant, who has been impleaded as a defendant in this suit upon her application. It is the case of the petitioner that the suit property is an undivided hindu joint family property under joint possession and enjoyment by the petitioner, the 3<sup>rd</sup> respondent and other co-sharers. It is the further case of the petitioner that there no cart pathway in the suit property as averred by the 1<sup>st</sup> and 2<sup>nd</sup> respondents, and the suit property is an agricultural land even at present. The 1<sup>st</sup> and 2<sup>nd</sup> respondents have resisted this application that the cart pathway sale deed was validly executed and there is no need for physical inspection by the commissioner. A perusal of the pleading of both sides in the suit as well as in this proceeding would show that the existence of cart pathway in the suit property is vehemently denied by the defendants. Though the initial burden of proof lies on the plaintiffs / the 1<sup>st</sup> and 2<sup>nd</sup> respondents herein to prove the existence of the cart pathway in the suit property, this application has been filed by the 2<sup>nd</sup> defendant seeking local investigation by commissioner. The 2<sup>nd</sup> defendant has further



averred that the cart pathway sale deed has been obtained by the plaintiffs from the 1<sup>st</sup> defendant by misrepresentation and that the 1<sup>st</sup> defendant is an illiterate. Nevertheless, as it appears from the pleadings, there is an assertion and denial of the existence of the cart pathway in the suit property. Hence, this Court is of considered view that local investigation by commissioner would aid this Court in appreciating the oral and documentary evidence adduced by the respective parties and this would not amount to collection of evidence. Further, there is no measurements of any sort of the alleged cart pathway, and hence, the local investigation by the commissioner would elucidate the measurements, topography, structure of the alleged cart pathway. Hence, appointment of commissioner would aid this Court in arriving at a just and proper decision in this case. Hence, this Court is of considered view that appointment of commissioner in this case is appropriate, and this Court is inclined to allow this application without any cost.

***Result:***

***5. As a result, this application is allowed without cost as follows:***

***(1) Advocate Thiru. Naveen Raj (M/s. 8067/2022) is appointed as the commissioner to inspect the suit property with the aid of the concerned Village Administrative Officer and qualified surveyor.***

***(2) The commissioner shall effect notice to all parties and follow due process of law in carrying out the commission.***

***(3) The Commissioner shall file report along with sketch and photographs duly certified under section 63(4)(c) Bharatiya Sakshya Adhiniyam, 2023 as expeditiously as possible and not more than 2 months from the date of this order.***

***(4) The remuneration is fixed as Rs. 7,000/- (Rupees Seven Thousand only) which is directed to be paid by the petitioner to the commissioner directly on or***



***before 18.11.2024 failing which this application stands dismissed. For payment of remuneration call on 18.11.2024.***

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 11th day of November 2024.

Sd/-  
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

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

Sd/-  
Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.

District Munsif  
Uthangarai