

In the Court of Principal District Judge, Kanyakumari District at Nagercoil.

Present : Thiru B. Karthikeyan, B.L.,
Principal District Judge.

Wednesday, the 16th day of July, 2025.

I.A. No. 8 /2025 in COS No.11/2022

1. M/s. Asirvatham Nadar Son Jewellers,
A Partnership Firm.

2. A. Arul Raj

2. Arwind Asir

... Petitioners/Defendants

- Vs -

M. Subramonian

...Respondent/Defendant

This petition coming on this day for hearing before me in the presence of Thiru P. Johnson, Advocate for the petitioners and Thiru B. Harikesavan, Advocate for the respondent and upon hearing both side and upon perusing the materials available on record, this court delivered the following:

ORDER

This petition has been filed by the defendants in the suit under Order 26 Rule 9 of CPC, seeking appointment of an Advocate Commissioner to visit the petition schedule property for ascertaining the actual market value

prevailing in that locality as on the date of sale deed No.50/2019, dated 09.01.2019 of Sub Registrar's Office, Vadasery, sale deed No.69/2019, dated 11.10.2019 of Sub Registrar's Office, Vadasery, sale deed No.129/2019, dated 10.01.2019 of Sub Registrar's Office, Eraniel and also to ascertain the present market value of the year 2025 with the aid of qualified chartered engineer/valuer and file valuation report and plan in this case.

2. Though the petitioner has sworn an affidavit running for six pages justifying the necessity for appointing an advocate commissioner, when this court asked for the relevance of such an opinion by an advocate commissioner for the disposal of the present suit, which is filed for recovery of money, the learned counsel for the petitioner would submit that it would add value to the defence taken by the defendants that the sale deeds were executed towards dischargee of the admitted loan amount. On the other hand, the learned counsel for the respondents, he was also present, objected to the petition stating that the scope of the suit does not warrant appointment of an advocate commissioner or for ascertaining the value of the properties covered under the said sale deeds.

4. Heard both. Perused the materials on record.

5. **The Point for consideration that arises is :-**

(i) Whether the petition deserves to be allowed?

6. **Point No.(i):-**

The suit is one for recovery of money filed by the respondent/plaintiff. One of the defences taken by the defendants is that, towards repayment of the admitted amount of borrowal, the aforesaid three sale deeds have been executed by the defendants in favour of the plaintiff and as such, the debts have already been discharged. In fact, it has also been claimed that the value of the property so conveyed is much more than the actual amount payable to the plaintiff.

7. If the defendants are able to prove that the sale deeds were executed in discharge of the loan amount due to the plaintiff, the plaintiff's suit has to fail. For this purpose, the actual value of the property covered under the sale deeds or the present market value of the property are all irrelevant. No purpose would be served by ascertaining the said values. It would only delay the proceedings and nothing can be achieved by appointing an advocate commissioner which would aid the disposal of the present suit. It is settled principle of law that an advocate commissioner can be appointed only if the report of the advocate commissioner would aid the disposal of the

suit. In such circumstances, the present petition deserves to be dismissed.

Point No.(i) is answered accordingly.

9. In the result, this petition is dismissed.

Dictated to the Steno-typist, transcribed and typed by her, corrected and pronounced by me in open court, this the 16th day of July, 2025.

Sd/-

Principal District Judge,
Kanniyakumari at Nagercoil.

Principal District Court,
Nagercoil.
Fair Order in
I.A.No. 8/2025 in
COS No.11/2022
Dt.: 16.07.2025