

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, NAGERCOIL**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Tuesday, on the 1<sup>st</sup> day of April 2025

**I.A. No. 6 of 2020**

**in**

**O.S. No. 18 of 2019**

**(CNR No:TNKK04-000011-2019 )**

S. Nagarajan

...Petitioner/Defendant

-vs-

S. Krishnan

...Respondent/Plaintiff

This Petition came before this Court on 21.02.2025 for final hearing in the presence of Mr. J. Parathasarathy, Advocate for the Petitioner, Mr. M.S. Moorthy, Advocate for Respondent. Upon hearing both sides and Upon Perusing the case records, having stood over till date for consideration, this Court hereby delivers the following:

**ORDER**

1. The Petitioner had filed the above Petition under Section 151 Code of Civil Procedure, seeking an order to accept the objection and redirect the Advocate Commissioner, to visit the Plaint schedule property and identify and report the Septic Tank, that lies down the drainage outlet, that, lies along the Western side of Plaint 'A' schedule property.

2. The Defendant has filed the above Petition, stating that, in the above suit, a Commission was issued and the Commissioner had answered the Petition Point No.

4, namely *'To note the Plaintiff has no other septic tank or soak pit, facilities to the Plaintiff 'A' schedule property house, except 'C' schedule septic tank'*, stating as if, the Advocate Commissioner had stated that, on the Western Side Room entrance, near the staircase, a drainage outlet was found, however the septic tank, for the said drainage outlet, could not be identified.

3. The Petitioner had also stated that, he gave memo, to the Advocate Commissioner, to note down the drainage outlet and the Tank inbuilt, by the Plaintiff, in his own property, for this exclusive use and also to note down the Plaintiff's house location. For the said memo, the Advocate Commissioner had answered that the drainage outlet, found near the staircase, in front of the Plaintiff 'A' schedule property's eastern room entrance was closed and the septic tank for the drainage outlet could not be identified. The Advocate Commissioner had specifically stated about the drainage outlet. The Plaintiff had failed to disclose the whereabouts of the said septic tank.

4. The Plaintiff or the Advocate Commissioner had not reported the true nature and future of the drainage outlet. There is a septic tank in the Plaintiff 'A' schedule property, just down the drainage outlet, situated in front of the Plaintiff's house. The Petitioner/Defendant had produced photographs showing the drainage outlet in front of the Plaintiff's house from where PVC pipe. The same would prove that there is a septic tank, just below the foundation of Plaintiff 'A' schedule property. The Advocate Commissioner had failed to inspect the Plaintiff 'A' schedule property. The Advocate Commissioner had not reported the real facts-in-issue before this Court. The

Commissioner's Report is inconclusive, it do not serve the very purpose of appointment of Commission. Hence the Advocate Commission has to be redirected to visit the Plaintiff schedule property and to note down the septic tank, lying below the drainage outlet, found in front portion of the Plaintiff 'A' schedule property. Hence the above Petition.

5. The Respondent had filed counter, stating that the above Petition is not maintainable under law and facts. The same is an abuse of process of Court and counter-blast to the earlier memo, filed by the Respondent/Plaintiff before the Commissioner. The Petitioner wants to commit damage and remove the floor tile of the Plaintiff's new build house by filing the above Petition. The Commissioner visited the Plaintiff schedule property, for more than three times and noted all the points on the request made by the Plaintiff and Defendant and filed interim and final reports. The present application's purpose was already noted and answered by the Commissioner, in her report, based on the memo filed by the Petitioner/Defendant.

6. The above Petition is frivolous and ill motive. The same has been filed, just to harass the Plaintiff by all means. The point sought for, to be noted, in the present Petition is outside the scope of the present suit and reliefs, sought for in the Plaintiff. The Petitioner had not seeked, to note any other points, except to commit damage the Plaintiff's house. The Petition lacks bonafides. The same is not sustainable. The same is liable to be dismissed.

7. The point for consideration is Whether the above Petition has to be allowed or not?

8. The Petitioner had exhibited Ex.P1 to Ex.P7. On perusal of the Complaint, it could be seen that the above suit has been filed amongst own brothers. Ex.P1 is the Sale Deed dated 30.08.1984 bearing Doc. No. 1736 of 1984 in the name of Sudalaiandy Pandaram, father of both the Petitioner and the Respondent. Ex.P2 is the Will dated 13.06.1990 bearing Doc. No. 83, Bk. III of 1990, executed by Sudalaiandy Pandaram, in the name of the Defendant. From the Northern Boundary of Ex.P1 Sale Deed, it could be seen that the Petition 'A' schedule property, was purchased by the Plaintiff independently. The Petition 'B' schedule property, was purchased by the said Sudalaiandy Pandaram, independently.

9. Ex.P3 to P6 are the Property Tax receipts dated 16.06.2006, 06.02.2008, 01.12.2008 & 06.10.2009, respectively all in the name of Sudalaiandy Pandaram in respect of Door No. 14A Vembanoor Street. Subsequently by Ex.P2 Will, the said Sudalaiandy Pandaram, had bequeathed the Petition 'B' schedule property on the Defendant. Ex.P7 is the Kist Receipt dated 12.03.2014 in respect of Fasali 1423, in the name of Petitioner/Defendant. In Ex.P1 and P2, there is no specific recital for granting easement right, over Petition 'B' schedule property to Petition 'A' schedule property. It is not the Plaintiff's case that both Petition 'A' & 'B' schedule property was originally owned by the said Sudalaiandy Pandaram, father of both Plaintiff and Defendant and later partitioned, amongst the Plaintiff and the Defendant. Both Petition 'A' & 'B' schedule properties are purchased, separately under separate Sale Deeds, in the name of the Plaintiff and the said Sudalaiandy Pandaram's father respectively.

10. In I.A. No. 1 of 2019, Advocate Commissioner V.Devaprasanna was appointed. She had filed interim report dated 03.04.2019. In her Interim Report, she had stated, as if, the Respondent/Plaintiff identified the Petition 'C' schedule septic tank, beneath the Defendant's cement flooring, Unless the said cement flooring is broke open, she could not identify the Petition 'C' schedule septic tank. Subsequent to her interim report, the Respondent/Plaintiff had filed a memo, before the Advocate Commissioner seeking to remove and dig the sand, cement plaster, in order to note and trace out septic pipeline. As requested by the Respondent/Plaintiff, they were done and the Advocate Commissioner had filed, Final Report, along with photographs. In her Final Report dated 04.12.2019, the Advocate Commissioner had stated that the cement floor, lying inbetween the Plaint 'A' & 'B' schedule properties was broke open and it is found that, there is a drainage outlet, from the toilet available in Plaint 'A' schedule property to the Plaint 'C' schedule septic tank. However the Advocate Commissioner had also stated that the said drainage outlet had been closed with a cap. For better appreciation of the said fact, the relevant portion from the Advocate Commissioner's Report is extracted here under:- “இரு தரப்பு வழக்கறிஞர்கள் மற்றும் வாதி, பிரதிவாதியின் அனுமதியுடன் A மற்றும் B பட்டிகைக்கு இடையில் அமைந்துள்ள சிமெண்ட் பகுதி உடைக்கப்பட்டு A பட்டிகையில் அமைந்துள்ள கழிவறையில் இருந்து C பட்டிகை செப்டிக் டேங்கிற்கு செல்லும் Drainage outlet அடையாளம் காணப்பட்டு அது சென்று முடியும் இடத்தில் மூடி போட்டு அடைத்து வைக்கப்பட்டிருந்ததும், மேற்படி

Drainage outlet முடியும் இடத்தில் செப்டிக் டேங்கின் ஒருபுற சுவர் உடைத்து பார்க்கப்பட்டு உறுதி செய்யப்பட்டது".

11. During the Advocate Commissioner's visit, the Petitioner/Defendant had wanted the Commissioner to note the availability of septic tank inbuilt in Petition 'A' schedule property. The Advocate Commissioner had stated that, the alleged septic tank could not be identified, by the Advocate Commissioner. The Advocate Commissioner in her report had stated, that there is a drainage outlet, seen in Petition 'A' schedule property, on the western entrance. For better appreciation of facts, the relevant portion of her report is extracted hereunder:- “வாதி சொத்தின் கிழக்கு பக்கத்தில் அமைந்துள்ள கழிவு அறைக்கான செப்டிக் டேங்க் C பட்டிகையில் உள்ளதும், அதற்கான Drainage outlet மேற்படி கழிவறையில் இருந்து வடக்கு தெற்காக சென்று செப்டிக் டேங்கில் முடிவடைகிறது. ஆனால் வாதி சொத்தின் மேற்கு பக்க அறையில் மேற்கு வாசலின் படிக்கட்டிகளுக்கு அருகில் உள்ள சிறிய அறையிலும் மற்றொரு Drainage outlet காணப்பட்டது. ஆனால் அதற்கான செப்டிக் டேங்க் அடையாளம் காணமுடியவில்லை”.

12. A con-joint reading of the above extracted portions of Advocate Commissioner's Report gives inference that from the Toilet available in Petition 'A' scheduled property, the night soil and other sewage are not reaching the septic tank available in Petition 'C' schedule septic tank, as because the Advocate Commissioner

had stated that the drainage outlet was closed with a cap. With regard to the Petition 'C' schedule septic tank, the Advocate Commissioner has stated that there is a vent pipe. However with regard to the alleged in built, septic tank, in Petition 'A' Schedule Property, the Advocate Commissioner had not noted, as if there is any vent pipe, seen in and around the said staircase or the hall, where the septic tank is allegedly said to be situated.

13. Such being the case, when the Respondent/Plaintiff had pleaded that the Petition 'C' schedule Septic Tank, is the only available septic tank for the Respondent/Plaintiff's Toilet and when the Commissioner's Report reveals that the drainage outlet, from the Respondent/Plaintiff's Toilet, to the said schedule septic tank remains closed, this Court could very well, infer that the Respondent/Plaintiff's Toilet's night soil and other sewage are not drained in the Petition 'C' schedule Septic Tank. At the same time, when the Advocate Commissioner had stated that there is a drainage outlet available in Petition 'A' schedule property, on its western side, near the staircase, it is for the Respondent/Plaintiff, to explain what for the said drainage outlet has been made, by the Respondent/Plaintiff. In case of failure to explain, this Court could very well, infer that, the same is for draining the night soil from the Petitioner's Petition 'A' schedule property Toilet.

14. Though the Respondent/Plaintiff gave memo to the Advocate Commissioner and subsequently got the cement flooring, in the Petitioner/Defendant's property broken and got soil excavated, when it came to his own property, the Respondent/Plaintiff was not inclined to remove the flooring and

pleaded as if the above Petition has been filed in order to break open the Respondent/Plaintiff's house Tiles. The non-inclination of the Respondent/Plaintiff, to broke open his floorings, in order to find, from where the Drainage Outlet, could be taken into consideration when adjudicating the main suit as to whether the Respondent/Plaintiff withholds any vital evidence, to prove his case or not. Insofar as the above interlocutory application is concerned, this Court is of the considered view that the Commissioner's report would be sufficient enough to hold that the drain of night soil and other sewage waste water from Petition 'A' schedule Toilet, is not drained into Petition 'C' schedule septic tank. With the above observation and also by holding that the Petitioner/Defendant, do not have the burden to disprove the Respondent/Plaintiff's case, rather, it is for the Respondent/Plaintiff to prove his case i.e. except Petition 'C' schedule septic tank, he has no other septic tank, this Court holds that re-issuance of Commission is not necessary.

In the result, the above Petition is dismissed. No cost.

Dictated to the Steno-Typist, transcribed and typed by her, corrected and pronounced by me, in Open Court this, the 1<sup>st</sup> day of April, 2025.

I Additional District Munsif,  
Nagercoil.

**Petitioner's side witnesses : Nil.**

**Petitioner's side documents :**

Ex.P1	30.08.1984	Sale Deed bearing Doc. No. 1736 of 1984 executed by Iyyan and another in favour of Sudalaiandy Pandaram
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Ex.P2	13.06.1990	Will bearing Doc. No. 83 book 3 of 1990 executed by Sudalaiandy Pandaram in the name of the Defendant.
Ex.P3	-----	Property tax receipts 3 in Nos in the name of Sudalaiandy Pandaram in respect of Door No. 14A Vembanoot Street.
Ex.P4	05.02.2008	Property tax receipts 2 in Nos. in the name of Sudalaiandy Pandaram in respect of Door No.14A.
Ex.P5	-----	Property tax receipts 2 in Nos. in the name of Sudalaiandy Pandaram.
Ex.P6	-----	Property tax receipts 2 in Nos. in the name of Sudalaiandy Pandaram.
Ex.P7	12.03.2014	Kist receipt in respect of fasali 1423 in the name of the Defendant.

**Respondent's side witnesses and documents : Nil.**

I Additional District Munsif,  
Nagercoil.

I ADM, Nagercoil  
Draft/Fair Order  
I.A.No.6/2020 in  
O.S.No.18/2019  
Date: 01.04.2025