

**IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present : Selvi. V. Sivaranjani, B.A., L.L.B.,

II Additional District Munsif, Nagercoil.

Tuesday, on the 15th day of July, 2025.

I.A. No. 5 of 2025 in O.S. No. 86 of 2020

CNR No.TNKK04-000162-2020

1.Arputha Gnana Selvi

2. Jegan

... Petitioners / Defendants

-vs-

Paulin Mary

... Respondent / Plaintiff

This petition came before this court on 11.07.2025 for a final hearing in the presence of Mr. C. Deva Sundaram, Advocate for the Petitioners / Defendants and Mr. N. Retnaswamy, Advocate for the Respondent / Plaintiff, counter not filed, set exparte and upon hearing both sides, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner has filed the above petition under Order XXVI Rule 10(3) and Section 151 of Code of Civil Procedure, seeking to pass an order to set aside the commissioner report and plan filed by the commissioner on 30.04.2025 in the above suit before this court.

2) Gist of Averments in the Petitioner / Plaintiff Petition :

The petitioner is the 1st respondent in the I.A.No.3 of 2020 and defendant in the above suit. The petitioner's brother Jegan is the 2nd defendant in the suit and 2nd respondent in the said I.A.No.3 of 2020. The petitioner submit that the commissioner report is unsatisfactory report and seriously flawed. It also contains serious deficiencies. No clarity is there in the commission report. Necessary information's related with defendants property and the property alienated by Jeya Raj to one Narayanan bearing Resurvey No.740/48 were not gathered by the Commissioner for the proper adjudication of the case. On 25.06.2022 the commissioner visited the suit property. On that day, petitioner submitted a petition to survey petitioner's land comprised in Anjugramam Village bearing Re.survey No.740/48 having an extent of 1.805 square links. Though the commissioner surveyed the entire area of the plaintiffs he failed to identify petitioner's property bearing Re.survey No.740/48 specifically. Even after petitioner request (No 4th request mentioned in the commissioners Report) the commissioner failed to measure the property which comprised in Anjugramam Village bearing Survey No.740/48 having an extent of 1 cent and 805 square links. He has not mentioned petitioner area as per petitioner request. Further he has also not identified and measured the area already alienated by petitioner's husband to one Narayanan having an extent of 1 cent and 900 square links.

3) So, it goes without saying that the commission report is biased and one sided report. The plan annexed by the commissioner along with the report has not exhibited the location of petitioner's property. He willfully and wantonly omitted to mention the area of mine in the plan. Though, the petitioner have given the copy of patta issued by the Government pertaining to Survey No.740/48 in favour of petitioner's husband Mr. Jeyaraj the commissioner never gathered any information from the Collectorate or from the Agasteeswaram Thasildar or from the VAO of Anjugramam (formerly Azhagappapuram Village). The commissioner not showed any interest to verify the village records regarding the patta given to petitioner and the area given by the Government to petitioner's husband.

4) The third point mentioned by the plaintiff in her commission application is to measure the plaint schedule property with the assistance of the Taluk Surveyor as per resurvey sketch or plan. But the commissioner measured the property not as per Resurvey records but as per lie. (Vide 1st para of the nineth page of the commission report). Though, petitioner specifically showed the commissioner in person the borewell installed by petitioner and the electric connection which is available in petitioner's land bearing Re.Survey No.740/48 and the foundation laid in the land of Narayanan. The commissioner never mentioned about these things in the plan or report.

5) The commissioner willfully and wantonly not mentioned in his plan the borewell and electric connection which were installed by petitioner in the property of mine with the Anjugramam Panchayat approval. Further, the plaintiff in order to protect her land from the pedastrains she has erected a wide gate in the south eastern side of her land. A pathway having 5 feet wideth is available in front of the said gate which leads to Anjugrmam main bus stand and main road. So, it goes without saying that the plaintiff is having better free exit and free entry to reach the Anjugramam bus stand and the man road Anjugramam. This court directed the commissioner to survey the plaint schedule property with the Assistance of Taluk Surveyor. But the commissioner has surveyed the area with the assistance of “ வட்ட சார் ஆய்வாளர் ” our Raja Sekar which is against the order of the cost. So, the petitioner sure that the report prepared by the commissioner with the assistance of Taluk Surveyor may not be fair one or genuine one. It is highly necessary to have a further enquiry in order to gather the real facts regarding the location of the plaintiff and defendants property. Otherwise, petitioner will be put to irreparable loss and injury which cannot be compensated later. Further, this court may not understand the real situation about the property of plaintiff and defendants.

6) Actually and factually there is no connection in between the plaintiff area and defendants area. The petitioner's husband Mr. Jeyaraj is an ex-service man. Because of that the Tahsildar of Agasteeswaram Taluk assigned

1.5 ares of land in Resurvey No.740/48 of Anjugramam Village. But, out of which he alienated petitioner 1 cent and 805 square links of land as per a registered settlement deed to petitioner. So, it is the bounded duty of the commissioner to denote and specify petitioner area in the plan prepared by the commissioner with the Assistant of Taluk Surveyor. Unfortunately, he failed to do so. So, it is highly necessary to set aside the commission report and plan submitted by the commissioner. Hence, the petition is to be allowed.

7) The Respondent set exparte in this petition.

8) The point for consideration is whether the above petition has to be allowed or not?

9) Point:

Heard. Records perused. The existing Advocate Commissioner's report has been duly filed after a proper commission warrant was executed in the presence of both parties. Despite, on perusal of advocate commissioner report and plan, this court could find some substantial procedural irregularity or bias as demonstrated by the petitioner to justify its rejection. Those irregularities includes no mention relating to Resurvey No.740/48 and its characteristics, to whom it belongs and further details require relating to the above said Resurvey No.740/48. Even after the defendant Arputha Gnana Selvi has given the petition to measure the same, an advocate commissioner has recorded the above petition

in the report but seems not have taken any steps to measure and report with regard to that petition, which causes serious prejudice to the defendant. Moreover, the details or physical feature whatsoever regarding the Resurvey No.740/48 is more necessary for the proper adjudication of the suit. Hence, the findings or observations in the report does constitute a valid ground for setting it aside. Even though, the petitioner has already filed objections to the said report, and the court is fully competent to consider those objections on their merits at the time of final adjudication, this court cannot come to a proper conclusion without necessary and exclusive details relating to Resurvey No.740/48. Even though, allowing this petition at this stage would lead to unwarranted delay in the proceedings and defeat the very purpose of an expeditious trial, in order to be very much cautioned that no prejudice to be caused to either parties and to arrive a proper and fair conclusion on the suit, this court is inclined to allow this petition.

As a result, this petition is allowed, No cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 15th day of July 2025.

II Additional District Munsif,
Nagercoil.

Petitioners side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No. 5/2025 in
O.S.No.86/2020
Date: 15.07.2025.
II ADM Court, Nagercoil.