

**N 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 17th day of June, 2025.

I.A. No. 7 of 2025 in O.S. No. 74 of 2021

CNR No.TNKK04-000097-2021

Thanumoorthy

... Petitioner / Defendant

-vs-

N.Subramanian

... Respondent / Plaintiff

This petition came before this court on 13.06.2025 for a final hearing in the presence of Mr. A. Sundar, Advocate for the Petitioner / Defendant and Mr. A. Jeganlal, Advocate for the Respondent / Plaintiff 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 14 (3) and Section 151 of Code of Civil Procedure, seeking to pass an order set aside the commission report and plan submitted the advocate commissioner in I.A.No.3 of 2021 and another advocate / commissioner may be appointed to visit the suit property, in order to executed the commission warrant properly as

stated in the commission application I.A.No.3 of 2021 by fixing correct schedule of property and measure the suit property as requested by both the parties and their counsel.

Gist of Averments in the Petitioner / Plaintiff Petition :

2) The petitioner is the defendant in the above case. The plaintiff had filed the above case for permanent injunction over plaint schedule property and for other reliefs. The petitioner stated that in the above case as per order of the court in I.A.No.3 of 2021, an advocate commissioner was appointed to inspect the suit schedule property. After visiting the suit schedule property, the advocate commissioner had filed report before this Court. The petitioner further stated that the Advocate Commissioner in collusion with Taluk Surveyor had filed a false report and plan before this court. The same is clearly evident from the commission report and plan submitted by the Advocate Commissioner before this court. The advocate commissioner had not mention the correct petition schedule property in his plan as well as report. The advocate commissioner had submitted three plans along with his report. In which plan No.3 described about the encroached area as per commissioner report. As per plan No.3, the column No.III is having an extent of 1.530 cents and column No.II is having an total area of 0.098 cent, So, altogether column No.II and III is having an total area of 1.628 cents of land. The plaint schedule/commission schedule property situates

on the western side adjacent to 1.628 cents of land stated supra. The same is clearly mentioned in the schedule of property column of plaint and commission petition. The commissioner had wrongly show the area belongs to the defendants comes within 1.628 cents of land as encroached area in his plan No.3. The above fact itself prove the commission plan and report is prepare by the commissioner and surveyor in a biased manner. Since, the area mention by the commissioner is not the plaint schedule property.

3) Plan No.2 filed by Advocate Commissioner also confirm the entire report of commissioner as well as his plan is false one. As per plan No.2 the column No.IV is having an area of 0.352 cent of land and column No.III/binding of defendant is having an area of 1.178 cents of land. So, altogether column No.III and IV of plan No.2 is having a total area of 1.530 cents of land alone. Since, the 1.530 cents of land comes within 1.628 cents of land, there is no chance for encroachment of petition schedule property by the defendant. On the western side of 1.530 cents of land described supra the defendant had left 0.098 cents of land as vacant for his own use towards north to south direction. The 0.098 cents of land is a part and parcel of land comes within 1.628 cents of land. But, the area belongs to the defendant having an extent of 0.098 cents of land stated supra is wrongly described as encroached portion in plan No.3 submitted by the advocate commissioner.

4) The vacant land available in-between plaintiff and defendant building having an extent of 0.488 cent of land is mentioned as column No.II in plan No.2. In the 0.488 cents of land eastern 0.098 cents of land comes within 1.628 cents of land belongs to defendant. So, the area available for pathway is only 0.398 cents of land. But, actually and factually if the area of pathway is calculated as per plaint/commission schedule property then it will come to an extent of 0.474 cents of land, for which only 0.398 cents of land is available after excluding defendant's 0.098 cent of land as per plan No.2. Remaining 0.076 cents of land in plaint schedule property is encroached by the plaintiff by constructing his house, the same is not mentioned by the Advocate Commissioner in his plan as encroached area. The fact stated supra too clearly proves the entire plan is false. Since, the entire commission report is based on the plan, the report of advocate commissioner is totally false.

5) The plaint schedule property/commission schedule property situates on the west, adjacent to 1.628 cents of land. But the construction work is carried out by the defendant within 1.628 cents of land as per plan No.2. Further, the 0.098 cents of vacant land belongs to the defendant comes within the 1.628 cents of land is wrongly described as encroached area by the Advocate commissioner in his report for the answer of point No.1 to 3 asked on the side of the plaintiff. Since the advocate commissioner had a false report before this Court, he had not give proper answer for most of the points mentioned in the

memo submitted to the Advocate commissioner on the side of defendant at the time of visit. The Advocate commissioner had not give any proper answer in his commission report wantonly for point No.2 and 3 asked on the side of the defendant.

6) The defendant in his memo submitted to Advocate commissioner had ask the advocate commissioner to measure the plaint schedule property and to note the encroachment made by the plaintiff in plaint schedule property. For which the advocate commissioner had given a false report as if the 0.098 cents of land belongs to the defendant comes within in 1.628 cents of land as encroached area. Actually and factually the 1.628 cents of land is not the plaint or commission schedule property. The defendant further in his memo submitted to advocate commission ask the advocate commissioner to note down the area of plaintiff's house, for which the advocate commissioner had got give any answer in his report.

7) The defendant in his memo submitted to advocate commissioner ask the commissioner to measure the counter claim property and file a report about the encroachment made by the plaintiff in commission schedule property. For which the advocate commissioner had given a false report by mentioning the vacant 0.098 cents of land belongs to defendant comes within 1.628 cents of land as encroached area. The advocate commissioner in a biased manner for

helping the plaintiff wantonly file false report and plan before this court in collusion with the surveyor. So, it is highly necessary that this court to set-aside the commission report and plan and another advocate/commissioner may be appointed to visit the suit property in order to executed the commission warrant as stated in the commission application by fixing correct schedule of property and measure the suit property as requested by both the parties and their counsel. Hence, the petition is to be allowed.

Gist of the Averments in the Respondent/Plaintiff Counter:

8) The Respondent / Plaintiff had filed a counter stating that the allegations made in this petition are denied by the respondent/plaintiff. The above petition is not legally valid. All the reasons stated in the affidavit filed with the above petition are fabricated. This petition has been filed to cause hardship and loss to the respondent/plaintiff. It is clear that the petitioner / defendant of this petition has filed this case to delay the case and change the nature of the case. In this case, the commission, authorized by the court, appointed a surveyor to inspect the property in question, prepare maps, and submit a report to the Commissioner. Since, the commissioner has clearly mentioned in the report that the petitioner has encroached on the property in question, the petitioner / defendant of this petition has filed this petition to change the nature of the case. Since the above petition has been filed out of

time, this petition is not maintainable. Hence to accept the counter and dismissed the petition.

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

10) Point:

Heard both sides. Records perused. On perusal, The existing Advocate Commissioner's report has been duly filed after a proper commission warrant was executed in the presence of both parties and a Taluk Surveyor, and no substantial material irregularity or bias has been shown that would necessitate setting aside the report entirely. Merely expressing dissatisfaction with the findings or observations in the report does not constitute a valid ground for setting it aside. 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. Solely being dissatisfied with the contents of the report does not constitute a valid ground for discarding it and initiating the entire process afresh. Courts must ensure that justice is not derailed by attempts to reopen settled procedural steps without compelling justification. In the light of above facts, this court is not inclined to allow this petition.

As a result, this petition is dismissed, without cost.

Dictated to the Steno-Typist, and typed by her directly in the Computer,
corrected and pronounced by me, in open court this, the 17th day of June 2025.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No. 7/2025 in
O.S.No.74/2021
Date: 17.06.2025.
II ADM Court, Nagercoil.