

IN THE COURT OF THE II ADDITIONAL DISTRICT MUNSIF, NAGER-
COIL.

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

II Additional District Munsif, Nagercoil

Monday, on the 2nd day of March, 2026.

I.A. No.10 of 2026 in O.S. No.136 of 2022

CNR No.TNKK04-000211 -2022

T. Balakrishnan

... Petitioner / Defendant

-vs-

1. P. Ansalam (died)

2. Parimala

3. Tony Robin

... Respondents / Plaintiffs

This petition came before this court on 19.02.2026 for a final hearing in the presence of Mr. P. Linus Raj, learned Counsel for the Petitioner / Defendant and Mr. N. Retnaswamy, learned Counsel for the Respondents / Plaintiffs, endorsed “ No objection ” and 1st defendant is died 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 under Order XXVI Rule 10(2) and Section 151 of the Code of Civil Procedure, seeking to pass an order to grant permission to summon and examine the Advocate Commissioner appointed in I.A.No.2 of 2022 in O.S.No.136 of 2022 personally in the open court, to ascertain the manners in which the commissioner has made the investigation.

2. Gist of Averments in the Petitioner Petition :

The petitioner is the defendant in the above suit filed by the respondents/ plaintiffs seeking reliefs including declaration, recovery of possession, permanent injunction and other consequential reliefs. The petitioner re submitted that while the above suit posted for recording further evidence on the side of the defendant, the respondents/plaintiffs filed a Commission Application in I.A.No.2 of 2022, which was allowed by this court and an Advocate Commissioner was appointed to inspect the suit schedule property. Pursuant to the said order, the Advocate Commissioner visited the suit Property and thereafter filed his report and plan before this court.

3. The petitioner further submits that the Advocate Commissioner has not properly and completely carried out the warrant issued by this court. The Commissioner has failed to consider the memo filed on petitioner side and has filed a report which is one-sided, incomplete, and prejudicial to petitioner's case.

Also, certain material aspects pointed out by petitioner were neither verified nor reflected in the Commissioner's report. The Commissioner has also made unwarranted and baseless observations, which are beyond the scope of the warrant and contrary to the actual physical features of the property. As such, the commissioner report and plan is liable to be set aside. Aggrieved by the said report, petitioner have already filed detailed objections before this court which are pending consideration. Hence, the petitioner insisted that in order to test the correctness, completeness, and veracity of the Commissioner's report, and for the purpose of effective adjudication of the issues involved in the suit, it is absolutely necessary to examine the Advocate Commissioner before this court.

4. The respondents Counsel endorsed “ No objection ” in this petition.

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

6. Point:

Heard the petitioner Counsel. Records perused. This suit is for declaration, recovery of possession and Mandatory injunction. The material on record discloses that in the aforesaid suit for declaration, recovery of possession and other reliefs in relation to the suit schedule immovable property filed by the

respondent/plaintiff against the petitioner/defendant, an application to appoint an advocate commissioner has been filed along with the plaint in which, An Advocate Commissioner was appointed for the purpose of conducting local inspection and he submitted his report on 02.09.2024. The petitioner/defendant filed his objections to the said report of the Advocate Commissioner on 23.09.2024. Subsequently, both parties adduced oral and documentary evidence in support of their respective claims, pursuant to which the petitioner filed the instant application seeking permission to summon and examine the advocate commissioner by stating the necessity of examining the advocate commissioner by alleging that the Commissioner has failed to consider the memo filed on petitioner side, certain material aspects pointed out by petitioner were neither verified nor reflected in the Commissioner's report, but made unwarranted and baseless observations, which are beyond the scope of the warrant and contrary to the actual physical features of the property which is likely prejudicial to petitioner's case.

7. In such circumstances, by taking into consideration the essence of Order XXVI Rule 10(2) CPC, *which enables a party to examine the Court Commissioner personally in the open Court touching upon any of the matters referred to him or mentioned in his report or as to his report or as to the manner in which he has made investigation.*

8. On the above said facts and circumstances, in order to give the petitioner side an opportunity to examine the advocate commissioner with regard to their sense of incompleteness as to the commissioner report and to avoid resulting in miscarriage of justice and for the purpose of effective adjudication of the issues involved in the suit, this court is inclined to allow this petition.

In the result, this petition is allowed. No cost.

Dictated to the steno-typist, typed by her in the Computer directly, printed, corrected and pronounced by me in open court this the 2nd day of March, 2026.

II Additional District Munsif
Nagercoil.

List of witness and documents for Petitioner side : Nil

List of witness and documents for Respondents side : Nil

II Additional District Munsif
Nagercoil.

*II ADM, Nagercoil.
Draft/Fair Order
I.A.No.10/2026 in
O.S.No.136/2022
Date:02.03.2026.*