

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

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

II Additional District Munsif, Nagercoil

Monday, on the 6th day of April, 2026.

I.A. No.3 of 2022 in O.S.No.132 of 2021

CNR No.TNKK04-000152-2021

Janet Baby

... Petitioner / Plaintiff

-vs-

1. Mariya Loyanse (died)

2. Felix Selvaraj (died)

3. Palpeenammal

4. Francis Xavier

5. Thynesimuthu

6. Mariya Arputham

7. Sahaya Princly

8. Selin Mary

9. Jasmin Benitta

10. Judo Benil

Addl. 11. Jayavoilet Rani

Addl. 12. Sahaya Lesly Loyanse

(Addl. Defendants 11 and 12 are
impleaded as legal heirs of 1st defendant
as per order in I.A.No.5 of 2023
dated 02.08.2025)

Addl.13. Mary Calvin Rajan

Addl.14. Joseph Felix Roy

Addl.15. Felix Kanishta Sharmi

(Addl. Defendants 13 to 15 are
impleaded as legal heirs of 2nd defendant
as per order in I.A.No.6 of 2023
dated 02.08.2025)

... Respondents / Defendants

This Petition came up before this Court on 17.03.2026 for a final hearing in the presence of Mr. G. Siva Kumar, learned Counsel for the Petitioner / Plaintiff and Mr. K. Saravana Kumar, learned Counsel for the 3rd, 5th and 8th to 10th Respondents / 3rd, 5th and 8th to 10th Defendants and Mr. C.S. Suresh Babu, learned Counsel for the 4th Respondent / 4th Defendant and Mr. A. Lawrence Peter Shaw, Learned Counsel for the 12th respondent, counter not filed, set exparte and 6th, 7th, 11th and 13th to 15th Respondents were set exparte and 1st and 2nd Respondents were 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 9 and 75 r/w Section 151 of the Code of Civil Procedure, seeking to issue Commission by appointing a Commissioner to make investigation for the purpose of elucidating the matter in issue and for ascertaining the amount of any mesne profits for the construction, alteration or destruction of the physical nature of the plaint 'B' schedule property and to ascertain damages for obstructing the pathway and desisting the drain of waste water by the defendants in the plaint schedule properties and to submit the report for the appreciation of evidence in the court of record for the proper adjudication of this

case and pass an order by allowing petition deeming it as a requisite at this stage of the case to safeguard the values of justice.

Points to be noted by the Advocate-Commissioner:

1. The encroachment made by the defendant in the plaint 'B' schedule property.
 2. The obstruction made by the defendants in the plaint 'B' schedule property intruding the right of pathway of the plaintiff to the plaint 'A' schedule property.
 3. The evasion of right of the plaintiff to draw water from the well and to drain waste water from the 'A' schedule property in the plaint 'B' schedule property.
 4. The destruction, construction and alteration made by the defendants in plaint 'B' schedule property to change in physical structure.
 5. And the detritus, debris and scrap spilled over the plaint 'B' schedule property in the event of construction, alteration and destruction of the plaint 'B' schedule property.
 6. Any other points that may be deemed to be necessary and indispensable at the time of investigation/commission by the commissioner may be noted and perused at the time of visit.
2. Gist of Averments in the Petitioner's Petition :

The petitioner is the plaintiff in the suit filed for permanent injunction over the 'B' schedule property and for other reliefs. The petitioner submits that the plaint 'B' schedule property is an area with an extent of 0.375 cents and is comprised of a well and a common pathway to fetch water from the well since the execution of a Sale

deed by one Late. Thainesi Nadar in favour of one of his sons and the father of the plaintiff named Soosai Asirwatham bearing the Document No.308/1955 registered at Nagercoil Sub Registrar Office for an area with the extent of 3.125 cents which is described as the plaint 'A' schedule property.

3. The petitioner further stated that after the demise of Soosai Asirwatham, the plaintiff received title and possession over the entire 'A' schedule property through the Release deed Doc. No.2351/2001 dated 07.11.2001. Thereby, the plaintiff was absolutely enjoying the 'A' schedule property owing to the 'B' schedule property with the common pathway to draw water from the well and by draining waste water.

4. The petitioner also submits that the nature of the 'B' schedule property is solely common and not a mere individual's right. The parties of this suit have no independent right over the plaint 'B' schedule property.

5. The Petitioner contends that on 09.03.2021, the 4th defendant had attempted to encroach the 'B' schedule property with a plan to construct a compound wall and intended to invade the plaintiff's right of enjoyment over the common 'B' schedule property. An invalid Partition Deed with Doc.No.353/2021 executed between the defendants states that the mendacious right of the defendants over the 'B' schedule property. Consequently, this suit is necessitated and filed by plaintiff praying for a Mandatory injunction over the 'B' Schedule property.

6. Further, the petitioner, alleged that while this suit is pending disposal before this court since 28.07.2021. On 08.09.2021, the defendants had intruded the 'B' schedule property and started construction works with an intent to obstruct the plaintiff's right of common pathway, drain of waste water and to fetch the water from the well through the plaint 'B' schedule property in any manner.

7. The petitioner/ plaintiff claims to have not bound by the partition deed dated 25.01.2021 executed by the defendants. The defendants are arrogating the 'B' schedule property to usurp its possession and to deprive the legitimate rights of the plaintiff over it. The plaint 'B' schedule property is highly cardinal and fundamental for the plaintiff to use it as a footpath to enjoy the possession of the 'A' schedule property and to fetch water from the common well as well as drain waste water from the 'A' schedule property.

8. But this act of the defendants encroaching by way of obstructing the common pathway and invading the right of draining waters and disrupting the way to draw water from the well with construction and demolishing its physical nature had infringed the licit right of the plaintiff over the 'A' and 'B' schedule properties. The violation caused to the plaintiff's legit and lawful right by the defendants are persistent, subsisting, ongoing, continuing and enduring in nature.

9. Under these circumstances, this petition seeking to appoint an advocate commissioner to make an investigation against the plaint 'B' schedule property and to submit its report for clarification of the issue and for proper adjudication is to be

allowed.

10. **Gist of Averments in the 4th Respondent's Counter:**

The counter was filed by the 4th Respondent and adopted by the 3rd, 5th and 8th to 10th Respondents.

11. The respondents submitted that the so-called plaint 'B' schedule property is not in existence for several decades except the well and the well itself was ruined long back and nobody is fetching water from the Well and the plaintiff's right of taking water from the Well is not disturbed by anybody even though the Well was ruined. The description of the plaint 'B' schedule property is contradictory to the description of the petition 'B' schedule property in the commission application.

12. The respondents further claimed that the 'B' schedule property is not in existence and the same is an imaginary one and hence the common pathway and draining waste water are also imaginary one. No such 'B' schedule property is available and no such property is described in the title deed of the petitioner. The alleged 'B' schedule property absolutely belongs to this respondent.

13. The respondents also denied such alleged occurrence took place on 09.03.2021. The alleged 'B' schedule property is in possession of this respondent and the Partition deed 353/2021 is a valid document and it is acted upon. Moreover, the petitioner has no locus standi to challenge the partition deed executed among the necessary parties. Besides, the suit is filed only for permanent injunction, mandatory injunction is not sought for.

14. The respondents claims to have every right to enjoy his property and the same cannot be questioned or challenged by the petitioner or anybody else. Moreover, the Well is available adjacent south east of the petition 'A' schedule property.

15. The respondents denied that the petitioner is having the main entrance on the northern side of the petition 'A' schedule property. Only to harass the respondents the petitioner has filed the suit describing an imaginary property as 'B' schedule property and hence the petition is not maintainable in law and on facts. The points to be noted in the commission application are about the properties of this defendant and the petitioner described this respondent's property as 'B' schedule property without any piece of evidence. Hence, the petition is to be dismissed.

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

17. Heard both sides. Records perused.

First and foremost, it is pertinent to note that the suit filed by the petitioner / Plaintiff is only for Permanent injunction and for declaring of the document No.353/2021 dated 25.01.2021 of Kanyakumari District Registrar, Nagercoil is void ab initio and will not bind the plaintiffs right over the plaint 'B' schedule property which is left as common. upon perusal of the plaint, it is clear that no relief of mandatory injunction has been sought by the petitioner/ plaintiff as claimed in this petition.

18. In a suit for permanent injunction, the court would primarily look into the possession and alleged interference. Therefore, the burden lies on the plaintiff to establish his possession and the alleged acts of interference through legally admissible evidence.

19. Whereas in the instant case, the petitioner/plaintiff seeks appointment of an advocate commissioner to note various aspects, such as encroachment, obstruction, usage of pathway, drainage, physical alterations, and even to assess damages and the mesne profits.

20. At this juncture, it is proper to remind the well settled principle of law that an advocate commissioner cannot be appointed for the purpose of collecting evidence or to establish who is in physical possession or to prove alleged acts of encroachment. These are issues that must be designed based on oral and documentary evidence adduced during the trial.

21. Therefore, this court is of the considered view that the points sought above to be noted by the commissioner are all matters to be proved by the plaintiff through oral and documentary evidence during trial. Appointment of commissioner for such purposes, amounts to collection and appreciation of evidence, which is impermissible. Further, the petitioner has also sought to ascertain mesne profits and damages, which are also matters to be adjudicated after full fledged trial based on adduced evidence and cannot be determined through a commissioner's report at this stage.

22. Moreover, it is pertinent to note that the very existence of plaint B schedule property is seriously disputed and rival contention made regarding title and possession by the respondents. As such, the appointment of an advocate Commissioner would not serve the purpose of elucidating the matter in dispute, but would instead amount to collection of evidence in favour of one party.

23. Therefore, this court is of the considered view that this petition clearly is not necessary for the purpose of elucidating the matter between the parties. In the light of above facts and circumstances, this court is not inclined to allow this petition. Hence this petition is dismissed.

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

The Order directly dictated to steno-typist typed in computer, and after making necessary corrections, and pronounced by me in the open court, this the 6th day of April 2026.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents -: Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

II ADM, Nagercoil.
Draft/Fair Order
I.A.No.3/2022 in
O.S.No.132/2021
Dated 06.04.2026