

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

Present : Tmt. K. Chithra, B.A.,B.L., (Hons)

I Additional District Munsif , Nagercoil

Tuesday, on the 23rd day of June, 2026

I.A. No. 9 of 2025 in O.S. No.202 of 2020

1. Muthukrishnan

2. Ida Mary

... Petitioner/ plaintiffs

-vs-

1. The Special Officer, BDO, Rajakamangalam

2. The President, Kanyakulam Panchayat,

3. The Divisional Revenue Officer, Nagercoil,

4. The Thasildhar, Agastheeswaram Taluk,

5. The District Collector, Kanyakumari District.

... Respondents/Defendants

This petition is came up before me on 22.06.2026 in the presence of Mr.R.Rathakrishnan, Advocate for the Petitioner/Plaintiffs and Mr.C. Johnson, Government Pleader for the Respondents/Defendants and upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition was filed under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure to appoint an advocate commissioner to visit the plaint schedule property to note the physical features of the plaint schedule property and to note the lie and extent of plaint schedule property and to note the

encroachments made by the defendants in the plaint schedule property and other points that are sought to have be noted in the petition and to file a report and plan.

Points to be noted:

1. To note the physical features of the plaint schedule property.
2. To note the constructions and the house building belongs to the plaintiffs situated in the plaint schedule property.
3. To note the water connection and electricity connection in the plaint schedule property.
4. To note the machinery situated in the hallow block company, and the hallow blocks and the materials therein in the plaint schedule property.
5. To note the encroachments made by the respondents/defendants in the plaint schedule property.
6. To note the compound walls and gate situated in the plaint schedule property.
7. To note any other points those are to be brought to the notice of the commissioner at the time of visit.

2. FACT OF PETITION:

2.1) The Petitioner is the 1st Plaintiff in the above suit and the 2nd Plaintiff is the Petitioner's wife. The Petitioner have filed the suit for Permanent

Injunction and other relief. The Petitioner is residing in the above said address. Originally the petitioners/Plaintiffs having possession and enjoyment over the petition Schedule Property for an extent of 105 cents comprised in Resurvey No.430/5 of vadasery village. 15.01.1983 onwards the 1st petitioner and his father enjoying the plaint Schedule Property without any interruption. On 15.01.1983 the petitioner's father Anbiah built a shed in the plaint schedule property conducting bricks manufacturing company. The Petitioner's father Anbiah runs a bricks making business in the plaint schedule property after obtaining proper permission from the authorities and paying taxes.

2.2) It is submitted that due to the old age on 02.09.1991 the petitioner's father transferred the bricks making business infavour of the petitioner. That on 13.02.1997 the Petitioner father was in the bricks manufacturing company, the bricks were fall down and the petitioner's father had sustained heavy injury and died on the spot. After the death of the petitioner's father the petitioner got the full right over the property and also constructed a building and residing there in bearing door No.2/26A and now new door No.2/23G-14 and paying taxes obtained electricity connection. 07-131-005-1337 and water connection. As such the petitioners are in the possession and enjoyment of the petitioner schedule property. On 06.05.2003 the petitioner had executed a possessory rights transfer deed in the name of the Petitioner's wife who is the 2nd petitioner/2nd Plaintiff.

2.3) It is submitted that on 04.09.2010 there was a fire accident happened in the brick factory. Due to that the building was collapsed and damaged. In the meantime the 1st respondent and his Hench men encroached a

portion of land and put fence. Thereafter the Petitioner measured the plaint schedule property and find out that only 50 cents are available. The 1st respondent has no right to encroached a portion of land. The petitioner had invested a huge amount of Rs.10,00,000/- for construction and renovation of the building and to construct the compound wall and invested Rs.10,00,000/- for the petitioner esteemed business. It is submitted that the petitioner business was running in the plaint schedule property till date. There are more than Rs.10,00,000/- worth raw material and machineries are available in the plaint schedule property building. In the plaint schedule property the petitioner planted and maintaining 51 teak trees, 15 neem trees and 15 coconut trees. The Petitioner is having adverse possession over the plaint schedule property and having valid right and title over the plaint schedule property. On 15.01.1988 onwards the petitioner's father occupied the plaint schedule property and in enjoyment of the plaint schedule property. Hence 20.04.1998 revenue tax receipt also issued in the name of the 1st Petitioner. It is submitted that the petitioner had produced relevant documents namely brick manufacturing license, business tax receipts, Revenue tax receipts, Water connection receipt, EB deposit receipt, EB payment receipt and house tax receipt to prove their uninterrupted possession and right over the plaint schedule property for the past 42 years.

2.4) It is submitted that on 18.11.2017 the 1st respondent sent a notice to the petitioner stating to vacate the plaint schedule property. On 29.11.2017 the Petitioner had send a reply notice to all the respondents. It is submitted that on after 2 years the 2nd respondent on the instruction of the 1st respondent on

17.03.2020 issued license infavour of the petitioner to conduct hallow blocks manufacturing factory and amicably solved the dispute. In this regard the petitioner obtained permanent license from the department of industries and commerce of Government of Tamil Nadu to run hallow block factory. Further on 17.03.2020 the petitioner obtained proper license from the 2nd respondent kaniyakulam panchayat president for running hollow block business. Hence the petitioner had valid license to run the factory.

2.5) It is submitted that on 02.11.2020 the officials from the panchayat and some other persons were illegally entered in to the plaint schedule building and attempted to evict the petitioner from the plaint schedule property forcibly without any prior information. If the petitioner evicted from the plaint schedule property the hard work and the dedication of the petitioner will be worthless and the petitioner cannot get the fruit of his till date hard work and investments. The Petitioner had established the petitioner business in the place if the Petitioner vacate the premises the petitioner business will be ruin. It is humbly submitted that the Respondents have no right to evict the petitioners from the petition schedule property.

2.6) It is submitted that the respondents often threatening the petitioner and trying to evict the petitioner with the help of henchmen. So on 03.11.2020 The Petitioner approached the 2nd respondent and requested not to disturb the peaceful possession of the Petitioner and solve the problem also went in vain.

2.7) In these circumstances the petitioner filled this suit to grant a decree

of declaration declaring the petitioner's right over the petition schedule property 50 cents of land situated in R.S.No.430/5 of putheri village and for consequential permanent injunction restraining the respondents, their men, agents, servants or anybody claiming under them from disturbing/obstructing/interfering with the Petitioner's peaceful possession in any manner and enjoyment over the petition schedule property and for a decree for permanent injunction restraining the respondents from encroaching and causing any acts of damages in the plaint schedule property.

2.8) Meanwhile the respondents unlawfully taking nasty steps and encroached a portion of plaint schedule property and constructed buildings during lis pendent of the suit. But the respondents purposefully suppress the real facts regarding the plaint schedule property and have make contradiction statemewnts in their written statements and in Evidence. Hence it is highly necessary to appoint a commissioner to visit the Plaint Schedule Property to note the physical features and other aspects to prove the actual facts of this case.

2.9) On 25.10.2025 the 1st respondent has been cross examined. During cross examination 1st respondent has categorically. Stated that the defendants have no objection for appoint a commissioner to visit the Plaint Schedule Property, which reads as follow:

"ஸ்தலத்தில் நேரில் சென்று ஆய்வு செய்து நீதிமன்ற ஆணையர் அறிக்கை தாக்கல் செய்ய எனக்கு எந்த ஆட்சேபனையும் இல்லை."

2.10) In the above circumstances it is highly necessary to appoint a commissioner to visit the Plaint Schedule Property and to note the physical features of the Plaint schedule property and to note the lie and extent of the plaint schedule property and to note encroachments made by the respondents/defendants in the plaint schedule property. The requirement of commission in this matter is highly essential for correct adjudication of the matter.

2.11) Hence it is most humbly prayed that this court may be pleased to appoint a commissioner to visit the plaint schedule property and to note the physical features of the plaint schedule property and to note the lie and extent of the plaint schedule property and to note the encroachment made by the respondents/defendants in the plaint schedule property. Thus this petition was filed.

3. COUNTER ALLEGATIONS OF RESPONDENT:

3.1) That the petition is not maintainable under law and facts.

3.2) The court has to be consider that the suit is in the year 2020. The petitioner have sufficient time to took a commission prior to the trial stage. It is further submitted that now the suit is posted for argument and at this stage

appointment of commissioner is not maintainable.

3.3) Now the petitioner's aim is to fill the lacuna arose at the time of trial and it is not maintainable and cannot be entertain.

3.4) The commission application at this stage create a new case and start a fresh cause of action and it will injure this respondent's evidence it was already given by this defendant.

3.5) The reasons alleged in support of the affidavit is disclosed that the petitioner is not having valid title to the suit property and such nature a commission can't be appointed. The Plaint Schedule Property is Tank Purampoke land. As per law of Tamilnadu protection of Tanks and Eviction of Encroachment act 2007, the suit is not maintainable.

3.6) The oral and documentary evidence showed that this is not a fit case for an appointment of commissioner at this stage. The petitioner's aim to seek a commission at this stage is to collect evidence by the way of commission which is forbidden under law. After cross examination of DW1 in the above suit the plaintiff stacked hollow bricks before the plaint schedule property. That on 06.12.2025 the 1st defendant had given a notice to the plaintiffs to remove the hollow bricks in the plaint schedule property, but the plaintiff has not removed the hollow bricks stacked there. So the plaintiff's act is unlawful.

3.7) The intention of the petitioner is to prolong the suit. If the

application may allowed it will injure the defendant's case heavily. The petition has no merit and it has to be dismissed limini. No law permits for appointment of commission after conclude the trial and at the stage of argument. The available evidence is enough to decide the matter in issue. This is a test petition to prolong the suit. Hence the petition is to be dismissed.

3.8) On the side of the Petitioners, Exhibit P1 marked. No oral evidence adduced on either side.

4. POINT TO DETERMINE:

Whether it is to be allowed or not?

Heard both side enquiry and Records perused.

5. REASON FOR DETERMINATION:

5.1) On perusal of case records, the petitioners/plaintiffs have filed the original suit in the year 2020 for the relief of permanent injunction and other reliefs and the suit was posted for arguments on both sides after closing both side evidence. There was no relief seeking any mandatory injunction to remove any encroachment or no recovery of possession was sought for. It is an admitted fact that the petitioners/plaintiffs have been in possession of the plaint scheduled property. The petitioners have filed Ex.P1/notice issued by Kaniyakulam panchayat to the petitioners directing them to remove the hollow blocks which were piled in large numbers at the mayana puramboke land of the

respondent/government land. The Ex.P1/notice was dated 06.12.2025. At this juncture, the filing of this petition has to be considered as collection of evidence or to drag on the proceedings. It is well settled principle of law that petitioner seeking advocate commissioner is not maintainable for the collection of evidence.

6. In fine, this petition is dismissed with costs of respondents 1 to 5.

Dictated to the Steno-Typist directly, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 23rd day of June, 2026.

(Sd/-K. Chithra)

I Additional District Munsif
Nagercoil

Petitioner's side witness :- - Nil -

Petitioner's side Documents:-

Ex.P1 06.12.2025 Notice sent by the 1st respondent / 1st defendant

Respondents side witness: - Nil -

Respondents side Documents: - Nil -

(Sd/-K. Chithra)

I Additional District Munsif
Nagercoil.

Fair/ Draft Order
I.A.No.9 of 2025 in
O.S.No. 202 of 2020
Date: 23.06.2026
IADM, Nagercoil.