

**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 12th day of August, 2025.

I.A. No. 3 of 2025 in O.S. No.2 of 2025

CNR No.TNKK04-000003-2025

Jermans

... Petitioner / Plaintiff

-vs-

Xavier Antony

... Respondent / Defendant

This petition came before this court on 06.08.2025 for a final hearing in the presence of Mr. A. Siva, Advocate for the Petitioner / Plaintiff, and Mr. R. Arumuga Perumal, Advocate for the Respondent/Defendant, 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 9 and Section 151 of Code of Civil Procedure, seeking to pass an order appointing an Advocate-Commissioner to visit and measure the plaint schedule properties with the help of Taluk Surveyor and note the required points mentioned below and file the report.

Points to be noted by the Advocate-Commissioner:

Since there are repetition of points listed in the affidavit, the same has been altered and listed below:

1. To measure 'A' schedule property and denote its features.
2. To measure 'B' schedule property and denote its features.
3. To denote the 12 feet width pathway from direction on the eastern side of plaint 'A' schedule property.
4. To denote the area of encroachment of 12 feet width north to south pathway on the western side of plaint 'B' schedule property.
5. To denote the breath, width and height of the compound wall constructed in the plaint 'B' schedule property.
6. Such other points may to be noted by the Commissioner at the time of visit.

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

The petitioner is the plaintiff in this suit and the petitioner in this petition. The suit is for demarcate, permanent injunction and mandatory injunction. The petitioner have purchased the petition/plaint 'A' schedule property from one L.Appadurai by way of Sale deed registered before the Kottaram Sub Registrar Office, via. document No.3063/1999 dated 27.12.1999. The previous document of petition/plaint 'A' schedule property is document No.1737/1993. In the petition/plaint 'A' schedule property above said document No.3063/1999, a separate layout plan was also annexed in that deed. The old survey number of the petition/plaint 'A' schedule property is 808/2 and it comes under

Thamaraikulam Village (now North Thamaraikulam Village). The present resurvey number of petition/plaint 'A' schedule property 808/2C2A6 and patta number is 8858. The total extent of petition/plaint 'A' schedule property is 4.65 cents.

3. In description of petition/plaint 'A' schedule property as well as the annexed plan in document No.3063/1999 which clearly exhibits that the "9" item property mentioned in the plan belongs to me. On the eastern side of petition/plaint 'A' schedule property there is 12 feet width pathway from north to south direction. And also on the northern side of petition/plaint 'A' schedule property, there is a 15 feet width pathway which comes from west to east direction. At the ending of above said 15 feet pathway from west to east direction, there is also another 15 feet pathway from north to south direction. As per the document of petitioner, petitioner is entitled to use the above said all three pathways for our ingress and egress.

4. The respondent/defendant claims right over the property (ie. 4th plot mentioned in the layout plan) by way of Sale deed document No.2978/2004 dated 07.10.2004 which was registered before the Kottaram Sub Registrar Office which is petition/plaint 'B' schedule property and the same is situated on the eastern side next to the above said 12 feet pathway of the petition/plaint 'A' schedule property. The respondent/defendant is also having right to use the above said all three pathways for their ingress and egress.

5. The petition/plaint 'A' schedule property after getting building plan approval from the Manakudi Village Panchayat dated 06.12.2024 On 18.12.2024 at about 8.30 A.M. with the help of nearly fifteen goondas as well as with the assistance of local South Thamaraikulam Police personnels, the respondent/defendant had encroached the 12 feet width pathway on the eastern side of the petition/plaint 'A' schedule property and constructed a compound wall by annexing and encroaching such pathway as their western boundary upto the level of the petition/plaint 'B' schedule property with the intention to prevent me from using the above said 12 feet pathway on the eastern side of the petition/plaint 'A' schedule property.

6. While petitioner came there after hearing such incident at about 9.00 A.M. on 18.12.2024 and questioning their illegal activities, at that time the respondent/defendant and his men, police personnel present on the spot used filthy languages as against me and my wife and elder son and also assaulted me which causes bodily injury to me and therefore petitioner got admitted as inpatient on 18.12.2024 in Asaripallam Government Medical College Hospital. Eventhough the admission intimation was given by the hospital concerned to the South Thamaraikulam Police Station, the South Thamaraikulam Police had not obtained any statement from petitioner and register FIR against the wrongdoers. So, petitioner's wife Mary Stella gave a complaint regarding this incident directly to the Superintendent of Police, Kanyakumari District, Nagercoil and

sent that complaint through register post with acknowledgment card to the Superintendent of Police, Kanyakumari District and the Inspector of Police, South Thamaraikulam Police Station dated 21.12.2024. The incidents happened on 18.12.2024 were all recorded in the CCTV Footage installed by petitioner.

7. The petitioner have purchased the petition/plaint 'A' schedule property in the year 1999 from the real owner of the respondent/defendant had purchased petition/plaint 'B' schedule property in the year 2004. In petition/plaint 'B' schedule property above document No.2978/2004, it is mentioned as one "Robert Kennedy Land" is situated on the western side of the petition/plaint 'B' schedule property which is differ from the actual lie of the property claimed by the respondent/defendant. Therefore it is necessary to fix the boundary and 12 feet width pathway in between eastern and western side of the petition/plaint 'A' and 'B' schedule properties respectively. Hence filing of this suit is necessitated.

8. The petitioner submit that defendant had already encroached the 12 feet width pathway on the eastern side of the petition/plaint 'A' schedule property and the respondent/defendant had also constructed a compound wall on 18.12.2024 annexed such 12 feet pathway approximately (40 feet length x 12 feet width = 480 sq.ft.) as their western boundary upto the level of the petition/plaint 'B' schedule property. The respondent / defendant after encroaching such pathway is taking stern steps to construct building there. So,

it is necessary and highly essential to restrain the defendant and their men from constructing any building on the western side of encroaching area of the petition/plaint 'B' schedule property and the same is denoted in the rough sketch which has been filed along with the plaint. The petitioner / plaintiff is having a good prima facie case and balance of convenience in favour of petitioner. Hence this petition is to be allowed.

9) Gist of the Averments in the Respondent/Defendant Counter:

The Respondent/defendant had filed counter stating that the petitioner has filed the suit for demarcation and fixation on boundary by metes and bounds and also for prohibitory and mandatory injunction against the respondent. The petitioner has filed the petition to appoint the Commissioner to have a local visits and measure the properties and also fix the boundaries as such, the petition is not maintainable in law and facts.

10. The averments in paragraphs 3 of the petition are not fully correct. It is true the petitioner purchased 4.65 cents of land comprised in Survey No. 802 of 2 as per document No. 3063 of 1999 on the file of Kottaram Sub Registry. The original owner without forming the layout sold some portions of property and in the year 2003, the original owner L. Appathurai had appointed the power agent one Tamil Raj and realigned the layout with consent of vendees. And a plan prepared for the realigned layout in Survey No. 808/2 of Thamaraiikulam Village. So, the layout plan if any annexed along with the sale

deed infavour of petitioner is not enforceable. As per thevised layout plan the roads and pathway were formed and the plots were reallocated with a concurrence of all the owners, hence the revised to lay out plan is binding on the petitioner also.

11. Due to the reallocation and realignment of layout the boundaries of plaint 'A' schedule property have been changed on the east, thereby a pathway planned to form on the east of 'A' schedule property is converted as a plot, accordingly the proposed pathway on the east of 'A' schedule property having 12 feet was cancelled and a new pathway is formed parallel to the pathway laid on the north of A schedule property. The petitioner obtained sub-division without giving proper notice to the joint owners even though there is no availability of specific boundary or survey stones, hence the sub-division is void ab-initio.

12. The averments in paragraph 4 of the petition are not fully correct, as stated above the layout was reassigned and reallocated and the plot No. 9 of the original layout plan is assigned as plot No. 20 in the revised plan. So, it is false to say that, there is a pathway available on the east of 'A' schedule property having 12 feet width from north to south direction. The petitioner is entitled to use the pathway allotted in the revised layout plan annexed along with the registered document bearing No.1063 of 2014 on the file of Kottaram Sub-Registry. As per the revised layout the pathways available as per the plan annexed in document No. 1053A of 2024 on the file of Kottaram Sub-Registry

and the same is accepted by all the owners in the layout inclusive of the petitioner. So, the petitioner is estopped from raise the plea against the revised layout by way of forming a new pathway and reallocation of plots. The respondent is in possession of his respective area as per the revised layout plan from the date of sale and there was no existence of pathway on the west of respondent property or on the east of the petitioner's property.

13. The respondent is in possession of his respective portion from the date of sale as per the revised plan which is annexed along with document No. 1053 of 2014 on the file of Kottaran Sub-Registry and from the date of sale the respondent is in possession and the same is known to the petitioner and others. Hence, there is no question of pathway on the east of plaint 'A' Schedule Property.

14. The petitioner without getting any approval from the authorities tried to construct the building and a'so attempt to demolish the western compound wall of the respondent's property. Thereby the respondent lodged a complaint before the Police Officials and the Police Officials conducted the enquiry and found that the revised layout was formed with the consent of all the plot owners inclusive of petitioner. Hence, the Police Officials referred the matter to the Revenue Authorities to maintain the law and order in the hamlet. Also, the Police Officials instructed the parties to approach the Civil Court to sort out remedies. For the purpose to file the suit false allegations are pleaded as

if the petitioner was assaulted by the respondent and his men and sustained injuries. The story invented for the purpose to put up the false cause of action for the suit.

15. Moreover, the petitioner filed the suit only as against the respondent without impleading necessary parties for the complete adjudication in the subject matter in issue and without mentioning the date of encroachment over the alleged 'B' Schedule property the suit is bad for non-joinder of necessary parties. And also, to fix the boundaries of schedule properties is not sustainable in the premature stage, since; demarcation and fix the boundary can be done through the execution proceedings on the decree. The points to be noted in the petition reveal that the petitioner tried to gather or collect the evidence through the Commissioner. Hence, the petition is not maintainable, even then the respondent is consented to appoint the commission for the limited purpose to note the physical features of the entire layout to cull out real fact before this court for the complete adjudication this matter. Hence, to accept the counter and dismissed the petition.

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

17. Point:

Heard both sides. Records perused. The petitioner/plaintiff filed the suit for demarcation, permanent injunction and mandatory injunction. The petitioner

claimed that being the rightful owner of the petition/plaint 'A' schedule property purchased in 1999 through a registered sale deed Doc No. 3063/1999 measuring 4.65 cents, includes three pathways: a 12 feet width path on the east, and two 15 feet width paths to the north and further east and the respondent/defendant is also entitled to use the above said all three pathways for their ingress and egress. The respondent admitted the above purchase by the petitioner but denied the claim of 12 feet path exists on the east side of plaint 'A' schedule property. Because the layout was reallocated and realigned, the eastern boundary of plaint 'A' schedule property changed what was intended as a 12 feet width pathway on that eastern side has now become a separate plot. Consequently, that pathway was removed and a new one was established parallel to the northern path. Further stated that the petitioner is only entitled to use the pathway as per the revised layout.

18. Moreover, allegedly, the respondent / defendant had encroached the 12 feet width pathway on the eastern side of the petition/plaint 'A' schedule property and constructed a compound wall by encroaching such pathway as their western boundary upto the level of the petition / plaint 'B' schedule property with the intention to prevent the petitioner from using the above said 12 feet pathway. Thus, it is necessary to fix the boundary and 12 feet width pathway in between eastern and western side of the petition / plaint 'A' and 'B' schedule properties respectively. The Respondent's contention is that the petitioner not

mentioned the date of encroachment in the alleged 'B' schedule property. Moreover, claiming to fix the boundaries of schedule properties is not sustainable in the premature stage, since demarcation and fixing the boundary can be done through the execution proceedings on the decree. Despite the contention, the respondent consented to appoint the commission for the limited purpose to note the physical features of the entire layout to cull out real fact before this court for the complete adjudication of this matter

19. Upon the above said circumstances,, this court is of the considered view that an appointment of advocate commissioner is required in order to clarify physical facts on the ground such as whether the pathway exists, its width or any alleged encroachments. In the light of above discussion, this court is inclined to allow this petition.

As a result, this petition is allowed, Advocate Tmt. Pretty Gracia R.V M.S.No.226/2025 is an appointed as Advocate Commissioner in this petition and her remuneration is fixed as Rs.8,000/- (Rupees Eight Thousand only), the same shall be paid by the petitioner on or before 21.08.2025. The Advocate Commissioner is directed to visit the plaint schedule properties after due notice to both sides in order to inspect and submit the detailed report and plan within two months. The Commissioner shall take assistance of Taluk Surveyor. Call on 21.08.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 12th day of August 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. 3/2025 in
O.S.No.2/2025
Date: 12.08.2025.
II ADM Court, Nagercoil.