

The petitioners have filed the above petition under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure, seeking to appoint a court Commissioner to make a local inspection and prepare a plan with the assistance of Taluk Surveyor and note down the following points.

Points to be noted:

1. To note down the general features of the scheduled property.
2. To identify the schedule property and measure the same by metes and bounds.
3. To identify 3.1/4 cents as per Partition deed No.3123/2005 of Edalakudy Sub Registrar's Office and measure the entire area with its Original boundaries.
4. To prepare a plan for the entire 3.1/4 cents and mark the scheduled property in that plan with the help of Taluk Surveyor.
5. To note down the lane like area on the eastern side of the petitioner's house and note the window, EB service connection of the petitioner on the said wall of the plaintiff and the water connection going through that.
6. To note down the Panchayat water tap connection on the eastern side of the petitioner's house in the lane like area. Such other points that may be asked to note down by the petitioner and her counsel at the time of commissioner's visit.

2) Gist of Averments in the Petition:

The petitioner is the 2nd plaintiff in this suit. The petitioner was filing this affidavit for and on behalf of the 1st Plaintiff who is petitioner's husband. The suit is for declaration and permanent injunction. The 1st plaintiff is the owner in

possession and enjoyment of the plaint schedule property ever since the year 2005. The 1st plaintiff got the plaint schedule property on 17.10.2005 from his mother Kurusadial through a Settlement Deed No.3187/2005 of Edalakudy Sub Registrar Office. From the date of Settlement deed, the 1st plaintiff has been in continuous title, possession and enjoyment over the same without any hindrance and his family lives thereon. The 2nd plaintiff is the wife of the 1st plaintiff and looking after the affairs of the plaint schedule property and she is the power holder of the 1st plaintiff.

3. After the execution of Settlement deed in favour of the 1st plaintiff, mutation of records have taken place and patta and revenue tax receipt are standing in his name. Electric connection and water connection are also stand in his name and he has been enjoying the same with absolute right. The plaint schedule property is measuring an area of 1 cent and 625 square links in which a portion of building bearing Door No.2/95/1 situates. It lies within the Suchindrum Town Panchayat area and assessed by the said Panchayat. The 1st plaintiff's mother Kurusadial got 3.1/4 cents out of Partition deed No.3126/2005 of Edalakudy Sub Registrar's Office. Out of 3.1/4 cents she executed a Settlement for 1 cent 625 square links in favour of the 1st plaintiff. So the plaint schedule property devolved on the 1st plaintiff through proper manner and means.

4. According to Partition deed No.3126/2005 of Edalakudy Sub Registrar Office the 1st plaintiff's mother Kurusadial got 3.1/4 cents. The respondent / defendant is a stranger who has got no right or title or possession over the scheduled property. The defendant makes a false claim that he has got a right in the plaintiff's property. So the entire 3.1/4 cents property as per Partition deed No.3126/2005 is to be measured and also 1 cent 625 square links (707.85 square feet) which belongs to the plaintiff is also to be measured and marked in the plan to be prepared by the Court Commissioner with its available general features. Only then a clear picture will emerge in order to find a proper adjudication.

5. In the earlier occasion a court commission was appointed in I.A.410/2016 and the Commissioner failed to file report because of the intervening Corona disease and other reason felt by the Commissioner and hence that application was closed because of non filing of report by the Commissioner. Hence, a court commission is highly necessary to bring the real facts before this court. Otherwise the plaintiff will be put to irreparable loss, hardship, injury and inconvenience. Hence, this petition is to be allowed.

6) **Gist of Averments in the Respondent's Counter:**

The Respondent has filed counter stated in the petition is not maintainable under law and facts. The petitioners filed this petition during the defendant side evidence i.e., during DW1 cross stage with intent to prolong this suit. The

petitioners earlier filed the commission application on 26.08.2016 and closed the same was numbered as I.A.No. 410/2016 and closed on 28.08.2023. The gist of the order is,

"I.A.No. 410/2016 is closed. In spite of several opportunity that Adv. Commissioner had not filed commissioner report and plan. Petitioner was directed to file Report as to execution of commissioner warrant by 24.07.2023. However till date petitioner had not informed this court as to execution of warrant. Petitioner is not interested in pursuing the commission. Hence, the above petition is closed."

7) The previous commission application was closed because the petitioners did not show interest in pursuing commission. The petitioners again filed the same petition only to prolong the suit further and nothing more. In fact the previous commissioner already visited the suit property on 15.07.2017 as per the memo dated 04.07.2017. After that the plaintiff side did not want to proceed the commission, since the factual status affect her case. Hence, the plaintiff did not proceed further, even after the court's strict order to inform the Commissioner to file report. Therefore, this court closed I.A.No. 410/2016 on 28.08.2023.

8) It is also worth noted after the closure of the I.A.No. 410/2016 the trial was commenced and plaintiff side evidences were completed on 30.04.2024. Now the case is posted for DW1 cross. Already the respondent

suffered more because of the prolonged pendency and delay of this suit. Filing of this commission application by the petitioners at this stage further cause continuous loss and mental agony to the respondent. Hence, this court to accept this counter and dismiss this petition with heavy cost.

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

10) Point:

Heard both sides. Records perused. The petitioner is the 2nd plaintiff in the suit filed for declaration of permanent injunction. In the present case the 1st plaintiff claims through Settlement Deed No. 3187/2005 that he has been in continuous title, possession and enjoyment of the 1 cent 625 sq links parcel ever since 2005, and shows supporting indicia such as mutation of records, utility connections and tax receipts in his name. Meanwhile the defendant/respondent asserts a claim as a stranger who has no right or title in the property. The pleadings further indicate that out of a larger 3.1/4 cents partitioned under Deed No. 3126/2005, the property in question needs definite measurement and marking and also possibly the entire 3.1/4 cents so that the true boundaries may be identified and a plan to be prepared.

11. The respondent's objection that the petition is being filed during cross-examination of DW1 and thereby seeks to delay the suit, does not

outweigh the plaintiff's need for clarity in identifying the disputed area before final relief of declaration and permanent injunction can be granted. The Court is not prejudging merits of title or possession by appointing a commissioner it is simply ordering a fact finding measure to aid the trial.

12. Considering the nature of the dispute over boundary, measurement, demarcation, possession and earlier commission (I.A.No.410/2016) was closed for want of a report further underscores the need for a fresh commission, This court is of the considered view that an appointment of an advocate-commissioner to inspect the site, measure the area, mark the boundaries in relation to the larger holding, prepare a plan showing available general features such as door number, building portion, surrounding features and file a report will serve the interests of justice and assist the Court in the proper adjudication of the issues at trial. In the light of above facts this court is inclined to allow this petition.

As a result, this petition is allowed, Advocate Thiru. R. Jawaharlal, M.S.No.2376/2010 is appointed as Advocate Commissioner in this petition and her remuneration is fixed as Rs.10,000/- (Rupees Ten Thousand only), the same shall be paid by the petitioners on or before 19.11.2025. The Advocate Commissioner is directed to visit the plaint schedule property 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 19.11.2025.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 4th day of November 2025.

II Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondents side witnesses and documents : Nil.

II Additional District Munsif
Nagercoil.

Draft/Fair Order
I.A.No.4/2025 in
O.S.No.323/2014

Date: 04.11.2025.

II ADM Court, Nagercoil.