

IN THE PRINCIPAL SUBORDINATE COURT AT KANCHEEPURAM

PRESENT: THIRU. K.S.ARUN SABHAPATHY, M.A., M.L., D.D.T.P.,
Principal Subordinate Judge.

Tuesday, the 21st day of January 2025.

INTERLOCUTORY APPLICATION NO.4 OF 2024

IN

O.S NO.233 OF 2017

(CNR No.TNKP07 – 000888 – 2017)

1. Govindaraj (died).
2. G.Damodaran.
3. Vasantha.
4. Jayamani.
5. G.Mohan.
6. G.Ravi.

.....Petitioners/Plaintiffs

Versus

1. Sathiyadharan (died).
2. Kalpana.
3. Kantha Bhattad.
4. Sandeep Bhattad.

.....Respondents/Defendants

This petition have come up on 04.11.2024 before me for final hearing in the presence of M/s.C.Govindasamy, M.Premkumar and S.Sivakumar, learned counsels appearing for the Petitioners, Mr.R.Abdulhakim, learned counsel appearing for the Respondents 3 and 4, upon hearing the submissions made by the learned counsels for the petitioner and the respondents 3 and 4, and also on perusal of the records, having stood over for consideration till this day, this Court delivers the following:

ORDER

1. This petition is filed under Order XXVI Rule 9 of CPC seeking for appointment of an Advocate Commissioner to note down the physical features of the

petition schedule properties and its boundaries with the aid of Taluk Head Surveyor and to submit the detailed report with plan and photos in this regard.

2. CASE OF THE PETITIONERS: Petitioners are the plaintiffs, who filed the suit vide O.S No.233 of 2017 for the relief of permanent injunction. Third plaintiff filed a suit vide O.S No.102 of 2014 and the respondents/defendants filed a suit for declaration and bare injunction vide O.S No.43 of 2013, which all are pending for joint trial on the file of this Court. In order to establish that the petition schedule properties are in possession of the petitioners herein by cultivating crops in it, petitioners have come up with the instant petition to establish their possession. Accordingly, the instant petition.

3. CASE OF THE THIRD RESPONDENT: Fourth Respondent filed his counter, which was adopted by third respondent. When the suits are pending at the far end of cross examination of PW1, petitioners have come up with the instant petition only with an intention to drag the proceedings in the main suit. Therefore, prays for dismissal of this petition with costs.

4. POINT FOR CONSIDERATION: Whether the petitioners are entitled for appointment of an Advocate Commissioner to note down the physical features in order to establish their possession over the petition schedule properties?

5. Heard the rival submissions made by the learned counsels for the petitioner and the respondents 3 and 4. Also, perused the records.

6. FINDING: Petitioners are the plaintiffs in O.S No.233 of 2017, which was filed for the relief of injunction simplicitor. The main suit of this I.A, along with two other suits vide O.S Nos.43 of 2013 and 292 of 2017 were pending for joint trial. As rightly pointed out by the learned counsel for the respondents 3 and 4, only after completion of cross examination of PW1 in part, the petitioners have come up with the instant petition. Petitioners in order to establish their possession over the petition schedule properties has come up with the instant petition. The main suit is filed only for the relief of bare injunction and the petitioners wanted to gather evidence to strengthen their case, which is not permissible under law and in view of that, the provision adumbrated under Order XXVI Rule 9 of CPC cannot be invoked and entertained which aspect has been settled in various decisions of the Hon'ble Madras High Court and the Hon'ble Supreme Court of India. In view of that, this Court is of the considered view that this petition lacks merits consideration and on the other hand deserves dismissal. Accordingly, the point for consideration is hereby negated.

7. RESULT: In the result, for the foregoing reasons, this petition is hereby dismissed, leaving the petitioners to bear their own costs.

Dictated to the Steno-typist, taken down by her in short-hand, transcribed by her directly in the desktop, corrected and pronounced by me in the open Court, on this the 21st day of January 2025.

Principal Subordinate Judge,
Kancheepuram.

LIST OF WITNESSES EXAMINED AND DOCUMENTS EXHIBITED ON
EITHER SIDE: Nil.

Principal Subordinate Judge,
Kancheepuram.
