

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT

KANCHIPURAM

PRESENT: Tmt. Fanny Rajan.B.A., B.L.,(Hons)

Principal District Munsif, Kanchipuram

Friday, the 19th day of September 2025

I.A. No. 3 of 2019 in

O.S.No.151/2019

CNR No. TNKP08-000466-2019

V. Sathiyamoorthy

...Petitioner/Plaintiff

/Versus/

1.S. Sundaramoorthy

2. S. Vijayakumar

3. S. Esaickel (*Amended As per order in IA No.6 of 2021 dated 02.11.2021*)

4. S. Saloman

...Respondents/Defendants

This Petition has come up on 19.08.2025 for final hearing before me in the presence of M/s. Kanchi.G.V. Mathiazhagan, S. Mageswaran, P. Kamalakannan, T.A. Shanmugam counsels for the Petitioner and M/s. V. Mohan, R. Kameshwari, counsels for the Respondent, upon hearing the argument and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following orders:

ORDER

1. This petition is filed under Order 26 Rule 9 and sec 151 of CPC to appoint an Advocate Commissioner to note down the physical features of the suit property and thus render justice.

Concise Statement of the averments in the Petition filed by the Petitioner:

2. The petitioner has averred that the suit property is a Grama Natham. A part of the property comprised in New Survey No.70/18, admeasuring East to West both side 22 ft., and North to South both side 39 ft., as per ABCD of rough sketch. Another part of the property comprised in New Survey No: 70/20, admeasuring East to West both side 22 ft., and North to South both side 21 ft., i.e. CDEF. in rough sketch.

3. The suit property originally belonged to one M.Radhakrishnan Mudaliar who executed a registered Settlement Deed dated 11.11.2005 in favour of his wife R. Dhanalakshmi. She mortgaged it with one K.Ramoorthy vide Registered Mortgage Deed dated 26.10.2007. To settle the mortgage, she offered to sell. After mortgage discharge receipt dated 24.10.2008 was executed followed by a registered Sale Deed in his favour. Since he was in possession putting up a hut, obtaining electricity connection, paying tax. On 03.01.2015, while altering his house for the Pongal Festival, the 1st Defendant objected claiming right.

4. Upon verification, it was found that in 2008 after he purchased the property, the 1st Defendant filed a suit in O.S.No: 144 of 2008 against the said Radhakrishnan for Permanent injunction in respect of the Properties in Item No.1, Thimmaiyanpettai Village, comprised in Survey No: 40/2 an extent 0.05 cents, measurement North to South 33 feet, East to West 66 feet totally 2178 Sq. ft., and Item No:2, Thimmaiyanpettai Village, comprised in Survey No: 40/2 an extent 0.02 cents measurement North to South 33 feet, East to West 26 feet totally 858 Sq.ft.

5. It was claimed that the Item No.1 was purchased from one Thulasidoss and Durasami under registered Sale Deed dated 27-05-1985 and the Item No:2 is the adjacent land of the Item No:1. The suit was decreed exparte on 08.08.2008 against the said Radhakrishnan and the 1st Defendant filed an Execution Petition in E.P.No:100 of 2009. Accordingly, the said Radhakrishnan was arrested and released on undertaking as the suit properties in O.S.No:144 of 2008, is not connected with his property and he never interfered with properties. Thereafter, the E.P.No.100 of 2009 was dismissed on 29-09-2000 for non prosecution.

6. Subsequently, the 1st Defendant filed another suit in OS.No: 151 of 2010, for the same Schedule of the property against the above said Radhakrishnan, his Vendor and him, alleging that the said Radhakrishnan intentionally to defraud

changed the boundaries in the Settlement Deed. Seeking to declare the Settlement Deed dated 11.11.2005, the Sale Deed dated 24.10.2018 and Permanent Injunction not to alienate or encumber. They were set exparte and the said suit was dismissed on 06.12.2014.

7. The 1st Defendant himself admits as his properties is not connected with his Sale Deed. Hence, the 1st Defendant has no right, title or interest or possession over this suit property and adopted third degree methods objecting his alteration on 03.01.2015. Hence, he filed OS No.36 of 2015 for declaration as the absolute owner and for permanent injunction against interference by the 1st defendant. Whiles, as the alteration was pending, he put up a temporary hut in front of the suit property in Government Porampoku land at Survey No:70/1.

8. The learned Additional District Munsif appointed an Advocate Commissioner in I.A.No: 84 of 2015 in the said suit and the Advocate Commissioner inspected the suit property along with Firka Surveyor on 29-12-2016 and submitted his interim Report. The temporary hut was rented to one Sankar to look after the suit property, while he paid the House Taxes and Water Taxes. The O.S. No: 36 of 2015 was posted for hearing and for his appearance on 20.02.2019 and due to illness he was unable to appear and the suit was dismissed for default. Against which he filed a restoration petition.

9. The 2nd, 3rd and 4th Defendants are the sons of the 1st Defendant and during the pendency of the restore petition, on 15.07.2019 at 07.30 a.m., they dug a foundation in the Eastern side beyond the suit property. Also they came with one retired Police and 10 rowdy elements forcibly trespassed into the suit property, removed the stone land mark which was fixed by the Firka Surveyor and destroyed the basement foundations from the suit property. Also they broke the door of the hut and threatened their tenant.

10. A police complaint was lodged on 16.07.2019 and as they turned, he forwarded the copy to the Superintendent of Police, the District Collector and Chief Minister. In order to dispossess him from the suit property, the Defendants with help of the Police and their Political power constructed a compound wall over the suit property on 17.07.2019 and dispossessed him. He is the absolute owner of the suit property and he has been dispossessed without his consent of immovable property otherwise than in due course of law. To maintain status quo an advocate commissioner has to be appointed and hence this petition.

Concise Statement of the averments of the Counter filed by 1st Respondent and adopted by the 3rd and 4th respondent:-

11. The respondents 1, 3, 4 denied the allegations and averred that the earlier suit in OS. No.36 of 2015 for relief of permanent injunction was dismissed for

default on 20.02.2019. In the said suit, he filed an interim injunction petition against the petitioner and the same was allowed. The said injunction is still in force. The petitioner/plaintiff and his henchman one Mr. Sankar illegally tried to construct a building encroaching their property and road porambokke. He lodged a police complaint and the Petitioner promised not to interfere. However he again interfered and another complaint was filed. To protect from encroachment the fencing was put up.

12. The petitioner/plaintiff does not have any valid title. There is no nexus between the suit property and the property described in the petitioner's sale deed. They are absolute owner of old survey No. 40/2, present survey no 70/18 admeasuring 7 cents. 0.5 cents was purchased under registered sale deed and 0.2 cents was in his possession and recognized.

13. As per the plaintiff's alleged sale deed, the property is situated in சிற்றூர் கிராமம், சிற்றூர் நத்தம். But there is no such village or natham in the Thimmalyanpettai Village. The petitioner/plaintiff is conveniently concealed the village name in the schedule. The description is denied. When the illegal acts were questioned, they were threatened with dire consequence. No action as taken for the complaint lodged. On 18.09.2017, they filed the Interim Injunction Application on 28.11.2017 and interim injunction was granted.

14. The petitioner has created a fake forged documents and tried to interfere with wrong recitals. In mean time advocate commissioner was appointed and he filed a detailed report along with surveyor sketch in earlier suit OS. No. 36 of 2015. Wherein it is stated that the the petitioner has illegally occupied the Government road poromboku land. The suit property description is completely different from the original exiting land. By creating title over the land which did not exist in the village, the petitioner is trying to grab their property. Despite knowledge of injunction, the construction was continued and a police complaint was lodged. Despite their advice, the petitioner threatened. He failed to approach this court with clean hands and has suppressed material facts. Hence, the petition has to be dismissed.

15. Upon perusal of records, it is noted that the 2nd respondent herein was set exparte on 14.09.2023.

16. **POINT FOR CONSIDERATION:** Whether this Petition under Order 26 Rule 9 CPC to appoint an Advocate Commissioner to note down the physical features of the suit property has to be allowed or not as prayed for?

DISCUSSION AND FINDINGS:

17. This Court considers the submissions of the learned counsel for the Petitioner and Respondent 1, 3, 4. This court had perused the materials on

record. No oral evidence has been adduced by both the parties in this petition. No documentary evidence is being let in by the Petitioner. The Respondents have filed Ex.R1 and Ex.R2 on their side.

18. The learned counsel for the petitioner had contended that the respondents had wrongly dispossessed them from the suit property and constructed a compound wall. He is the owner of the suit property. In the earlier suits, the 1st respondent has admitted that the property of the Petitioner and him are different. Hence, the property has to be resurveyed and the alterations made in the property have to identified. The earlier advocate commissioner report does not act as res judicata. The cause of action of this suit and the earlier suit are different. The issue of title is pending. Only if an advocate commissioner surveys the property, it can be identified, if the description of the property is in order and whether there has been alterations subsequent to the earlier suit and report.

19. Per contra, the learned counsel for the respondents 1, 3 and 4 had stated that the Petitioner has not been conveyed any title as his vendor and her predecessor Mr.Radhakrishnan had no title in the suit property. The suit property is a Salai Poramboke. The village name is not mentioned in the schedule. Whereas, that mentioned in the Petitioner's sale deed is non existent and fake. The OS No.151 of 2012 filed by the 1st respondent was dismissed for default like the OS No.36

of 2015 filed by the Petitioner. There is cloud over title and the Petitioner has no right in the suit property. Hence, the petition has to be dismissed.

20. This court finds that the issue regarding title in the suit property, the earlier suits and if this suit is barred by res judicata, unlawful dispossession is a matter of trial and cannot be decided in this suit without perusal of the ocular and documentary evidence. Hence, no observation is made in this petition regarding the issue regarding title, cloud over title, unlawful dispossession, suit barred by res judicata. The merits of the said contentions would be decided at the appropriate time in the trial or enquiry and not in this petition.

21. For the purpose of this Petition, this court has to only decide 2 aspects regarding whether the earlier advocate commissioner report will act as a res judicata and whether there is any necessity to inspect the suit property as described.

22. This suit has been filed under Section 6 of the Specific Relief Act against unlawful dispossession from the suit property. The Petitioner had sought for removal of compound wall and recovery of possession. The Ex.R1 is the advocate commissioner report filed on 24.03.2017 in OS No.36 of 2015. Admittedly, the cause of action even as per the averments by both parties arose in 17.07.2019 when the Petitioner was allegedly dispossessed. Further, there is a

specific pleading that a compound wall was constructed on 17.07.2019 after dispossession. Also regarding movement of boundary stone.

23. Even as per the Respondents 1, 3 and 4, they admit the fencing put up in the suit property. Hence, even considering both pleadings it is evident that the wall sought to be removed has been constructed post the advocate commissioner report in Ex.R1. Therefore, the said advocate commissioner report does not in any manner assist in ascertaining the current position of the suit property after the date of alleged dispossession. Further, this court opines that the measurements in the said Ex.R1 report have to be correlated to ascertain the current positioning of the fencing to decide the issue at hand regarding the positioning of the compound wall.

24. In respect to the nature of the suit property, even as per the pleadings in both the parties, there is an encroachment in the poramboke. Whether the same is within the suit property or not is a matter to be decided in trial. Hence, to ascertain the boundaries and the physical positioning of the suit property which is within the poramboke land and that conveyed to the parties can be decided only after physical inspection.

25. In respect of the description of the suit village as per the schedule and the contradiction in the Sale Deed cannot be decided without firstly attempting to

identify the suit property. The possession of the respondents in the suit property is not in dispute and admitted. Therefore, the Ex.R2 patta does not assist the case of the Respondents 1, 3 and 4.

26. Also there are averments regarding the property of the Petitioner and respondents are different. Only upon physical verification, it can be ascertained in which survey number the property currently in possession of the Respondents is situated. It is not in dispute that the main issue in this case is identify the suit property, alleged wall constructed.

27. As the main issue is regarding the identification and illegal construction is to be ascertained, this Court is of the considered view that the nature and position of the same would be possible only after a physical inspection and due measurement. It may be true as pointed out by the learned counsel for the respondent that the property is already measured in Ex.R1. However, the cause of action and dispute in this suit is subsequent to that report. The subsequent events cannot be determined based on the earlier report unless remeasured and surveyed.

28. Further, it is a well established principle of law that the report, plan of the advocate commissioner are not conclusive evidence. However, in light of the facts of this case, this Court is of the considered view that appointment of the

Advocate Commissioner is necessary to enlighten this court regarding the physical features and the nature of property especially the portion of wall sought to be removed. It is true that the onus lies on the parties to prove their case. This report is only to substantiate and identify the physical positioning which shall subsequently used for corroboration of the evidence let in by both parties.

29. Though the Petitioner had not sought for measurement, this court is of the considered view that the current status of the suit property has to be surveyed with the assistance of the Taluk Surveyor to identify the suit property and the alleged illegal wall in question. Further, there will be no prejudice caused to the rights of the Respondents as the Advocate Commissioner would be examining the property after giving notice to both parties and any objections may be raised before this court.

30. Also the issue regarding improper description of the suit property in the schedule and sale deed whether had affected the identification of the same under Order VII Rule 3 and whether it is a deliberate suppression of material fact is a matter to be decided after providing an opportunity to both parties to adduce their oral and documentary evidence. Hence, this court finds that the said contentions cannot be decided at this juncture and shall be decided in the main suit.

31. From the above discussions, this Court opines that for effective adjudication of the suit, the physical features of the suit properties have to be noted down and measured. Only thereafter, this court would be in a position to decide the dispute at hand regarding the identification and alleged compound wall to be removed. Hence, this court is inclined to allow this petition and appoint an advocate commissioner to note down the physical features of the petition property and measure the same along with the help of the Surveyor and file his report and plan. The advocate commissioner fee and expenses towards the entire inspection process shall be borne by the Petitioner.

32. Considering the nature of the pleadings, relationship between the parties and relief sought for this Court is of the considered view that the parties shall bear their own costs.

RESULT:

33. In the result, this petition to appoint an advocate commissioner is allowed. No costs to parties. Advocate Mr.R.Premnath Singh, M.S.No.387/2017, (Mobile No.9751626357) (email id kanchiprem007@gmail.com) is appointed as an Advocate Commissioner for the petition mentioned purposes of noting down the physical features and measuring the petition property with the help of

Taluk/Town Surveyor and submit his report with plan on or before 23.10.2025. The Advocate Commissioner Fee is hereby determined as Rs.10,000/- it has to be paid by the petitioner directly to the Commissioner in the following manner, a sum of Rs.7,500/- shall be paid by the Petitioner on or before 26.09.2025 and the balance Rs.2,500/- shall be paid on the date of inspection to the Advocate Commissioner directly. The Advocate Commissioner is hereby directed to file his report with the plan on or before 23.10.2025. Call on 23.10.2025.

Dictated to the typist, who directly typed the same in her Computer, corrected and pronounced by me in open court, this the 19th day of September 2025.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and defendant side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
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