

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT
KANCHIPURAM

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

Principal District Munsif, Kanchipuram

Thursday, the 4th day of September 2025

IA 3 of 2024 in O.S.No.5/2024

R. Lakshmi Narasimman

....Petitioner/ Defendant

/Versus/

K. Yoganand

... Respondent/ Plaintiff

This Petition has come up on 19.08.2025 for final hearing before me in the presence of M/s. A. Gnanasambandan counsel for the Petitioner and M/s.J. Kamesh kumar counsel 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 had filed under Order 26 Rule 9 and section 151 of Code of Civil procedure 1908, to appoint an Advocate Commissioner to make a local inspection and also to note down the physical features of his property and the suit property more fully described in the petition schedule, and fix the boundary

of western side of respondent/plaintiff and as well as eastern side of petitioner/Defendant, with the help of Taluk Surveyor and to submit a detailed report with a plan and thus render justice.

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

2. The petitioner has averred that he was the owner of the vacant site situated in S. No. 244/1A1B. It originally belonged to his grand mother V. Krishnaveni, who executed a Registered settlement deed dated 26.08.2004 in favour of her sons V. Loganathan, V. Manigandan and him, gifting away portions with absolute rights. The settlement was acted upon. He was given the property under B schedule and since, he was in peaceful possession.

3. After the settlement deed, the said V. Loganathan built a house within his boundary limits on his western portion of his property without leaving any space on western side and later he sold it to respondent/plaintiff. Whiles in the month of August 2023, when he cleaned his property to build the house, the Respondent/plaintiff unnecessarily created trouble to him and insisted him to measure the land and build a house.

4. On 21.09.2023, he applied for a survey and a survey was conducted on 20.10.2023. As clarification was sought for by the respondent, re-survey was applied on 10.11.2023. During the pendency of aforesaid re-survey application,

the Respondent/Plaintiff, made attempt to encroach on his property by engaging an excavating vehicle which was stopped. On 28.11.2023, the Taluk Deputy Surveyor inspected and conducted a re-survey along with relevant records. In the aforesaid surveys it is found that the boundary of respondent/plaintiff property ends exactly with the western wall of his house. And it has been confirmed that her plot exactly starts from the said wall.

5. Hence it is necessary for an advocate commissioner to note down the physical features of his property and the suit property, measure and fix the boundary of the western side of respondent and eastern side of petitioner/defendant's property with the Taluk Surveyor. It will avoid much oral evidence and minimize the evidence at the time of trial. Hence this petition.

Concise Statement of the averments of the Counter filed by Respondent:-

6. The respondent denied the allegations and averred that he is the absolute owner of the schedule property having purchased the same from Mr.V.Loganathan on 14.11.2011 through registered deed. He alone enjoyed the property without any let or hindrance by way of mutation of the revenue records in his favour. At the time of execution of the sale deed the vendor Mr.V. Loganathan also gave the actual sketch to show the topographical plan of the A.C. Sheet Roofed residential building and site plan which is morefully

described in the schedule hereunder. Since purchase he is in possession.

7. Whiles, the Petitioner/defendant who is the owner of the western side of his house and also acknowledged the schedule boundaries. His vendor at the time of construction of the building for easy access air left 2.6 feet X 107.6 feet in the western side of the building and marked as ABCD in the plaint plan. For some ulterior motive the petitioner/defendant made an attempt to dig out the foundation in the western side of the building which was already left by his vendor which was described as ABCD in the Plaint plan and resisted. He was threatened by the defendant and his henchmen on 19.12.2023.

8. Based on the specific boundaries with valid considerations alone this respondents/plaintiffs have purchased the property from their respective vendor on 14.11.2011 since from 2011 itself, with the sketch based on the documents have already mortgaged the property. That the petitioners/defendants have been collecting the evidence for filing this vexatious petition on that threshold this petition is liable to be dismissed. When the title is not in dispute, there is no need for this petition. As per the settled proposition of law in the suit for bare injunction the petitioner have no iota of right to seek the advocate commissioner application and further in the schedule of property of the petition the petitioners/defendants have wantonly introduced the new case by way of

collecting the evidence by way of filing this petition. Hence, the petition is not maintainable at this stage and has to be dismissed.

9. POINT FOR CONSIDERATION: Whether this Petition under Order 26 Rule 9 CPC seeking to appoint an Advocate Commissioner has to be allowed or not as prayed for?

DISCUSSION AND FINDINGS:

10. This Court considers the submissions of the Learned counsel for the Petitioner and Respondent. This court perused the materials on record. No oral or documentary evidence has been adduced by both the parties in this petition.

11. This court finds that the petitioner has sought for appointment of advocate commissioner to inspect the suit properties and note down the physical features with the help of the Taluk Surveyor and fix the boundaries.

12. This court finds that the suit is filed seeking for permanent injunction. It is the contention of the Petitioner that there is a clarification needed in the western boundary of the property and hence this petition to fix boundaries. Also to minimise oral evidence. Whiles, the respondents have specifically denied alleged that the title is admitted. There is no dispute regarding the boundaries or description of property. There is no allegation of encroachment. This suit is filed

for permanent injunction by him and there is no counter claim. When the Petitioner admits the description and measurements of the suit property, this court opines that the Petitioner wants to collect evidence.

13. This court finds that this suit is filed only for injunction simpliciter. There is no dispute regarding the boundaries, measurements and identification of the suit property. This court finds that there is no allegation regarding encroachment also. No issues are framed regarding any encroachment. There is no single document to show how there is any difficulty in identifying the properties. In fact if any advocate commissioner is appointed as prayed for, this Court considers that he would be required to measure the suit property with surveyor. Such a practice would only amount to gathering evidences on behalf of the petitioner. It is a well established principle of law that the advocate commissioner cannot be appointed to gather evidence.

14. The Petitioners have to prove their own case through oral and documentary evidence and not through an advocate commissioner. It is true that the Petitioners have sought to survey the property, completed and also sought for resurvey and it is their case that it didn't materialise. However this court considers that in the absence of allegations regarding encroachment or identification or description, there is no reason for surveying the property. Also no amount of evidence in the

absence of pleadings can be entertained. There is no single viable reason in the Petition mandating or necessity for survey of the property to clarify to this court the description, measurement and identification of the suit property.

15. Under such circumstances, it is the duty of the Petitioners to prove their title in respect of the schedule property. A mere measurement of the entire suit property with the Taluk Surveyor would only amount to collection of evidence especially when the identification and measurements is admitted by the parties themselves and not in dispute. In fact the Petitioner himself admits that this petition is filed to minimise the trial and oral evidence. This court is of the considered view that the report if any would not assist the court in resolving the issue at hand regarding title or possession. Further when there is no specific relief regarding fixation of boundaries in the suit, there is no purpose to fix the boundaries through an advocate commissioner. It appear to be only a delay tactic. Hence, this court finds that in the interest of justice, this Petition is liable to dismissed.

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

RESULT:

In the result, this Petition is dismissed. No costs.

Dictated to the typist, who directly typed the same in her Computer, corrected and pronounced by me in open court, this the 4th day of September 2025.

PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM

Petitioner and defendant side witness and document : NIL

PRINCIPAL DISTRICT MUNSIF
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