

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI

Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)

Additional District Munsif, Kulithalai.

Dated Wednesday, the 15th day of October 2025

I.A No.04/2024 in O.S No.120/2024

- 1) Ramalingam
- 2) Malaikolundu
- 3) Kumar @ Kumarasamy
- 4) Marudhanayagam

...Petitioners/Plaintiffs

- Vs -

- 1) Perumal
- 2) Muniyandi
- 3) Manickam
- 4) Thasildhar, Kadavur Taluk
- 5) Revenue Divisional Officer, Kulithalai
- 6) The State of Tamilnadu, represented by its
District Collector, Karur.
- 7) The Village Administrative Officer,
Devarmalai

...Respondents/Defendants

This petition has come up for final hearing on 26.09.2025 before this Court in the presence of Thiru. R.M.Senthil, the Learned Counsel appearing for the Petitioners and in the presence of Thiru. A.Jaffer Shet, the Learned Counsel appearing for the Respondents No. 1 to 3 and in the presence of the Government Pleader Thiru. K.S.M. Sahul Hameed, the Learned Counsel appearing for the Respondents No.4 to 7, upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed by the Petitioners under Order 26, Rule 9 of CPC for the appointment of commissioner in order to inspect the suit property, measure the same, for fixing boundaries and to report as to the encroachment by the Respondents/Defendants No.1 to 3 over the suit property.

2) The Learned Counsel for the Respondents No. 4 to 7 has stated before this Court and also endorsed that there is no counter on the side of the Respondents No. 4 to 7.

Brief averments in the affidavit:

3) The Petitioners are the Plaintiffs in the above suit and this petition has been filed by the 4th Petitioner on behalf of others. The suit property originally belonged to one Abdhul Muthalif Rowthar of Devarmalai Village. On 29.07.1994, by way of a registered sale deed, the father of the Petitioner No.1 to 3 namely Rathinampillai has purchased the property in S.F.No.510 in Devarmalai Village to an undivided extent of Acre 5.44 Cents out of Acre 10.88 Cents, from the said Abdhul Muthalif Rowthar. On the very same day, the remaining portion of the land in the said survey number to an extent of Acre 5.44 Cents was also purchased by the sons of the above said Rathinampillai, namely Arumugam, Ramalingam (1st Petitioner), Malaikolunthu (2nd Petitioner) and Kumar @ Kumarasamy (3rd Petitioner) for a valuable sale consideration.

4) From the date of the above sale deeds, the said Rathinampillai and his sons have been in the possession and enjoyment of the suit property. The said Rathinampillai died on 01.12.2013. The said Arumugam S/o.Rathinampillai, pre-deceased Rathinampillai leaving behind Ponnammal and Maruthanayagam (4th Petitioner) alone as his legal heirs. Therefore, the Petitioners have been in the possession and enjoyment of the suit property by way of the above said sale deeds.

5) In respect of the suit property, the Government had also granted joint patta in the name of the Petitioners along with the said Ponnammal W/o. (Late) Arumugam in Patta No.743. Thereafter on 24.01.2024, the Petitioners have entered into a registered partition deed in respect of the suit properties and the sharers have been in the separate possession and enjoyment of the suit property by putting up ridges and other boundaries.

6) In the said partition deed, the “B” schedule property was allotted to the 1st Petitioner, to an extent of Acre 2.57 Cents with definite four boundaries. Likewise, the “C” schedule property was allotted to the 2nd Petitioner, the “D” schedule property was allotted to the 3rd Petitioner, the “E” schedule property was allotted to the 4th Petitioner each to an extent of Acre 2.57 Cents respectively with definite four boundaries.

7) This apart, the “F” schedule in the partition deed which are the common well and sites have been allotted to all the sharers in the extent of Acre 0.16 Cents, and for common pathway in between the sharers, an extent of Acre 0.44 Cents were allotted for common purposes. Therefore, the total extent of Acre 10.88 Cents were allotted to the Petitioners and they are in the possession and enjoyment of their respective shares. But in the boosthuthi, none of the shares are identified and it is existing as such with total extent of Acre 10.88 Cents.

8) After the above partition, the Petitioners have arranged to put up private stones and other features over the suit property and the Respondents No.1 to 3 have put up shed into the suit property and the said encroachment made by the Respondents/Defendants No. 1 to 3 is shown as “B” schedule property in the above suit. This apart, the Respondents No. 1 to 3, with the help of the local Village Administrative Officer with a view to grab the suit “B” schedule property from the Petitioners, have also arranged for obtaining patta in the name of the Respondents No. 1 to 3 over the same. The suit “B” schedule property is also a part of the “A” schedule property purchased by the Plaintiff’s family.

9) Over the suit “B” schedule property, the Respondents/Defendants No. 1 to 3 have put up a small temporary structure shed in the month of June 2024. Immediately, the Petitioners have approached the VAO and requested him to vacate the encroachments over the suit property, but the VAO refused to do so. This apart, the Petitioners have also paid batta for surveyor to measure the suit “A” schedule property, but without measuring the suit property, the revenue officials have given intimation to the Petitioners that they had measured the suit property.

10) By taking undue advantage of the same, the Defendants No. 1 to 3 are trespassing into the suit “B” schedule property with the assistance of the revenue officials. The Respondents No. 1 to 3 are liable to vacate the “B” schedule property as per law. The Respondents No. 1 to 3 have no sort of any right, title and interest over the suit property at any point of time and they are liable to remove the temporary structures. This apart, the Respondents No.1 to 3 are also trying to trespass into the suit “C” schedule property, which is the remaining part of the suit “A” schedule property.

11) The Respondents No.1 to 3 have occupied and encroached the portion of the suit “A” schedule property, which fact could only be found out by way of surveying the suit property by appointing a commissioner, in order to find out the said encroachment. Hence, this petition.

Brief averments in the counter filed by the Respondents No. 1 to 3:

12) The averments contained in the petition affidavit are all false and are specifically denied. The property in S.F.No.510 in Devarmalai Village, Kadavur Taluk actually consists of a total extent of Acre 11.16 Cents. The plaint plan is entirely wrong. The suit “A” schedule, “B” schedule and “C” schedule property are total wrong and their four boundaries are illusory. The sale deeds which are filed on the side of the Petitioners are covering the property only to an extent of Acre.10.88 Cents. But in the said sale deeds, four boundaries were not specified for the property.

13) In respect of the property as purchased by the Petitioners, to the east side, the Government puramboke land is situated and thereafter to the east of the same, the south- north road is situated. In the said Government puramboke land, the Respondents No.1 to 3 and one Rajendran, Seenivasan are having their asbestos house. In the said property, for more than a period of 50 years, the Respondents No. 1 to 3 had constructed a thatched house and thereafter, had constructed asbestos houses and have been in the possession of the said houses by paying necessary tax to the Government. The land which are in the possession and enjoyment by the Respondents No. 1 to 3 is situated in S.F.No.510/2. The Respondents No. 1 to 3 along with the above said persons, have approached the revenue officials for obtaining patta in respect of their possession over the said Government puramboke land. When the revenue officials were about to enquire and grant patta in respect of the possession of the Respondents No.1 to 3 over the above said property, the Petitioners in order to hinder the grant of patta in favour of these Respondents, have filed this suit and this petition with false averments.

14) The suit property which belong to the Petitioner is situated in S.F.No.510/1. However, the above said survey number has been sub-divided and in order to grab the property which are in the possession of the Respondents No. 1 to 3, this petition and the above suit has been filed by the Petitioners by stating false averments that these Respondents have encroached the suit property.

15) This petition for appointment of commissioner is an unnecessary one. In the Boosthuthi and in possession of the suit property, the Respondents No. 1 to 3 only are enjoying the same. The Petitioners are bound for the expenses for the appoinment of the commissioner and these Respondents are not liable. The filing of this petition shows that the Petitioners are not aware of the details of the suit property. Hence, this petition is liable to be dismissed.

Point for determination:

16) Whether this petition is entitled to be allowed or not?

Evidence:

17) There is no oral and documentary evidence adduced on either side.

Discussion:

18) Heard both sides. Records perused. Upon perusal of records, it is seen that the Petitioners/Plaintiffs have filed the above suit against the Respondents/Defendants for the relieves of declaration of title in respect of the “B” schedule property and for the consequential relief of recovery of possession of the “B” schedule property from the Defendants, by way of directing the Defendants to remove the illegal structures put up by them over the suit “B” schedule property and to deliver its vacant possession to the Plaintiffs and also for the relief of Permanent Injunction against the Defendants/Respondents No.1 to 3, thereby restraining them from interfering with the Plaintiff’s peaceful possession and enjoyment over the suit “C” schedule property.

19) After careful consideration of the Pleadings of both the parties, the averments contained in the petition affidavit and the counter, it is seen clear that the Petitioners/Plaintiffs have claimed to be the owners of the suit property, by way of the two registered sale deeds dated 29.07.1994, in document number 689/1994 and 690/1994, in respect of the suit property in S.F.No.510 to an extent of Acre 10.88 Cents in Devarmalai Village, Kadavur Taluk. Apart from the above sale deeds, the Plaintiffs/Petitioners have claimed their title over the suit property by way of a registered partition deed which was entered into among the Petitioners.

20) It could also be seen that the Petitioners have claimed that they have raised seasonal crops into the suit “A” schedule property from the date of purchase. It is seen that the Plaintiffs/Petitioners had arrayed the property in S.F.No.510 to an extent of Acre 10.88 Cents as a whole as the suit “A” schedule property. Also, the Petitioners had contended that the Respondents/Defendants No.1 to 3 have put up a temporary structure over the suit “A” schedule property and which portion was

specified as the suit “B” schedule property in this petition. The remaining portion in the suit “A” schedule property was specified as the suit “C” schedule property by the Petitioners.

21) Therefore, this petition has been filed by the Petitioners for the purpose of appointing a commissioner, for measuring the suit property with the help of a surveyor, to fix the boundaries and to report as to the encroachment as alleged to have been made by the Respondents No. 1 to 3.

22) Per contra, it is seen that the Respondents No. 1 to 3 had contended that the total extent of the property in S.F.No. 510 is Acre 11.16 Cents and the Respondents No. 1 to 3 are in the possession of the property in S.F.No.510/2, which is a Government puramboke land, by way of constructing asbestos house over the same and claimed to have been in the possession and enjoyment of the said property for more than a period of 50 years. The Respondents No. 1 to 3 have also claimed to have been paying necessary house tax for the said house constructed by them. It is further alleged that the Respondents No.1 to 3 were about to obtain patta in respect of their possession in the said Government puramboke land, by approaching the revenue officials and when the revenue officials were about to enquire and to grant patta to these Respondents, the Petitioners in order to grab the property of the Respondents obstructed the possession and enjoyment of the Respondents and had filed the above suit and this petition.

23) Therefore, it is seen that the Petitioners had claimed to be in the possession of the suit property by way of the above alleged two sale deeds. However, the Respondents No.1 to 3 have denied as to the factum of encroachment as alleged to have been made by them and they also denied as to the four boundary description of the suit property. It could be seen clear that in respect of the property in S.F.No.510 in Devarmalai Village, by way of the above said two sale deeds the Petitioners are claiming to be in the possession and the Respondents No. 1 to 3 have claimed to be in the possession of the property in S.F.No.510/2 by claiming it as a Government

puramboke land and denied the allegation of encroachment. However, in order to show that the suit property has been sub-divided, no documents were filed on the side of the Respondents No. 1 to 3.

24) This being so, this Court is of the view that there exists a dispute between the Petitioners and the Respondents No. 1 to 3 in respect of their possession and as well as there exists a dispute regarding encroachment of the suit property. This Court is of the opinion that as the Petitioners have alleged that the Respondents No. 1 to 3 have encroached their property, which fact was denied by the Respondents No. 1 to 3, in order to decide the above dispute between the parties and to arrive at a clear decision regarding the factum of encroachment, this Court deems it necessary to appoint a commissioner in order to inspect and measure the suit property. Therefore, this Court is inclined to allow this petition.

Result:

In the result, this petition is allowed Advocate Mr. J.Santhosh Kumar is hereby appointed as the Court Commissioner. The Advocate Commissioner is directed to issue proper notice to both parties, inspect the suit property, note down the physical features, to measure and demarcate the same with the help of a qualified surveyor, and to report before this Court as to the factum of encroachment if any, over the suit property by way of filing a detailed report and plan, along with the surveyor plan regarding the same. The Commissioner's remuneration is fixed as Rs.8,000/- . The Petitioners are hereby directed to pay to the Advocate Commissioner, the commission remuneration of Rs.8,000/- on or before 30.10.2025, failing which this order shall stand automatically vacated.

Dictated to my steno-typist, taken down by her in short hand and typed by her in the computer, corrected by me and pronounced by me in the open court on this the 15th day of october 2025.

**Additional District Munsif,
Kulithalai.**

Petitioners side witness and documents - Nil.
Respondents side witness and documents - Nil.

Additional District Munsif,

Kulithalai