

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, KULITHALAI**Present : Selvi.A.Yughathymariya, B.Com, L.L.B.(Hons.,)****Additional District Munsif, Kulithalai.****Dated Tuesday, the 10th day of March 2026****I.A No.06/2025 in O.S No.148/2023**

Venkatachalam

...Petitioner/Defendant**- Vs -**

1) Govindarasu

2) Venkatachalam

3) Natesan

...Respondents/Plaintiffs

This petition has come up for final hearing on 23.02.2026 before this Court in the presence of Mr.R.Krishnaswamy, the Learned Counsel appearing for the Petitioner, and in the presence of the Mr.S.Parthipan, the Learned Counsel appearing for the Respondents and 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 Petitioner/Defendant under Order 26, Rule 9 of r/w section 151 of CPC seeking permission of this Court to appoint an advocate commissioner to inspect the counter claim mentioned property.

Brief averments in the affidavit:

2) The Petitioner is the Defendant in the above suit. The Respondents herein filed the above suit for Permanent Injunction in respect of the property in S.F.No.485/15, 485/17 and 485/19 of Pannappatty Village. The allegations in the plaint are false and denied. The Petitioner had filed a detailed written statement with a rough plan and it has to be part and parcel of his affidavit.

- 3) The property comprised in S.F.No.455/4 of Pannappatti Village and other property including a share in the well comprised in S.F.No.455/7 originally belonged to the petitioner, his father and his sisters. The Petitioner got 1/3 share in the well situated in S.F.No.455/7, in the electric service connection with service connection no.15 and also in the motor pumpset. In S.F.No.455/7 PVC pipelines were laid and also in the southern portion of S.F.No.455/5B PVC pipelines were laid.
- 4) The father and sisters of the Petitioner had entered into a registered partition deed dated 31.05.2013 in respect of their property. The Petitioner was allotted with the property described in the partition deed as 'C' schedule. The petitioner was allotted with the property in S.F.No. 455/4 of Pannappatty Village and 1/3 share in the well, motor pumpset in S.F.No.455/7. The petitioner has been irrigating his property described in the written statement as 'A' schedule by using the pipeline, which are described in the written statement as 'C' schedule.
- 5) The property in S.F.No.485 is situated east and south of the property in S.F.No.455/4. The Respondents are seriously attempting to destroy the eastern ridge of the property of the Petitioner in S.F.No.455/4 and the pipelines which were described in the written statement as 'B' schedule and 'C' schedule. The Respondents are also attempting to disposses the petitioner from the property mentioned in the written statement as 'A' schedule.
- 6) The Respondents made severe damages to the pipelines which is existed under the property described in the written statement as 'C' schedule. The Respondents are liable to restore those pipelines. The above act of the Respondents forced the Petitioner to file the written statement with a counter claim.
- 7) In I.A.No.3/2023, the Respondents filed the said petition for the appointment of commissioner and an advocate commissioner was appointed on 18.10.2024. The Petitioner was also very eager to take the commissioner to the disputed site to bring

his knowledge with regard to the damaged pipelines and physical features available in the property comprised in the written statement. Unfortunately, the above petition was closed for the non-cooperation of the Plaintiffs with the commissioner.

8) The property which are described in the written statement are to be noted and observed by this Court. The pipelines and the physical features those are available in the property which are described in the written statement as 'B' schedule and 'C' schedule are to be brought to the knowledge of this Court to give a picture with regard to the nature of the property and location of property.

9) The commissioner inspection with regard to the property mentioned in the written statement are certainly necessary in the interest of justice, since a counter claim is made by the Defendant. Though the Respondents have not cooperated with the commissioner, the Petitioner is very eager to take the commissioner to the property mentioned in the written statement to establish their case. A commissioner may be appointed with a specific direction to inspect the property described in the written statement with the help of a qualified surveyor in the interest of justice. The Petitioner is ready to pay or deposit the fees that may be fixed by this Court. The property described in the written statement are situated within 60kms from this Court. However, a commissioner is not appointed the Petitioner will be put to irreparable loss and hardships. Hence, it is just and necessary to appoint an advocate commissioner with a direction to inspect the property described in the written statement, to note down the pipeline and physical features available in the property described in the written statement as 'B' and 'C' schedule and to submit a detailed report with a plan. Hence, this petition.

Brief averments in the counter objection filed on behalf of Respondents:

10) This petition is unsustainable in law or on facts. All the allegations contained in the affidavit are denied and the petition is allowed to prove them strictly. When

the above suit is posted for trial, in order to drag on the case proceedings, this petition has been filed by the Petitioner. The reasons stated by the Petitioner in the affidavit is not sustainable in the eyes of law. The Petitioner is liable to prove them through documentary evidence.

11) In the above suit, a petition for appointment of commissioner was filed and the same was allowed by this Court. On that basis, the commissioner remuneration was paid by the Respondent to the advocate commissioner. This being so, this petition has been intentionally filed by the Petitioner. The short and long cause title are not correct. The petitioner is not entitled to the relief sought for by him. Hence, this petition is liable to be dismissed.

Point for consideration:

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

Evidence:

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

Discussion:

14) Heard both sides. Perused records. Upon perusal of records, it is seen that the above suit has been filed by the Respondents/Plaintiffs against the Petitioner/Defendant for the relief of Permanent Injunction in respect of the suit property comprised in S.F.No.485/15, 485/17 and 485/19 of Pannappatty Village. It could also be seen that the Petitioner/Defendant by way of their written statement has filed a counter claim thereby claiming for the relief of Permanent Injunction against the Plaintiffs and also for the relief of mandatory Injunction to restore the pipelines described in the 'C' schedule to its original position, in respect of the property in S.F.No.455/4, 455/7 and 455/5B.

15) This being so, in the above suit already a petition for the appointment of commissioner was filed by the Respondent herein and the same was allowed by this Court in I.A.No.3/2023. Consequently, due to the non-cooperation of the Plaintiffs with the commissioner, the above petition was closed by this Court. When the above suit is then posted for trial, this petition seeking the appointment of advocate commissioner to inspect the property as described in the written statement/ counter claim filed by the Petitioner/Defendant in the above suit was filed.

16) The Petitioner has alleged that the Plaintiffs have damaged and attempted to interfere with the possession of the Petitioner in respect of his property in S.F.No. 455/4, a well situated in S.F.No.455/7 and the PVC pipeline laid by the Petitioner in S.F.No.455/7 and also in the south eastern portion of S.F.No.455/5B of Pannappatti Village. The major contention of the Petitioner is that the Plaintiffs/Respondents have made severe damages to the pipeline which has been in existence and beneath the property described in the written statement as 'C' Schedule and they also contented that the Respondents are liable to restore the pipelines.

17) Further, the Petitioner alleged that as the earlier commission petition in S.F.No.3/2023 was closed due to the non co-operation of the Plaintiffs, the Petitioner herein could not be able to take the commissioner to show the damaged pipelines and the physical features with regard to the property as described in the counter claim. Therefore, in order to prove the alleged damages made by the Plaintiffs over the property of the Defendant, the Petitioner had sought this Court to appoint an advocate commissioner to inspect the property as described in the written statement/counter claim, to note down the physical features and also the damages alleged to be made by the Plaintiffs over the same.

18) The major objection that has been raised on the side of the Respondents is that already a commission petition to inspect the suit property has been filed by the Plaintiffs which was allowed by this Court and the commissioner remuneration was

also paid to the advocate commissioner by the Plaintiffs. They also alleged that when the earlier commission petition was already filed, this petition was again filed by the Petitioner for the appointment of advocate commissioner is not maintainable and hence, the Respondents sought this Court to dismiss this petition.

19) Upon careful consideration submissions made on both sides and upon perusal of records, it could be seen that the Petitioner/Defendant had filed a written statement along with counter claim for the relief of Permanent Injunction against the Plaintiff and also for the relief of Mandatory Injunction to restore the pipelines over the 'C' schedule property as described in the counter claim by them. This apart, it could be seen that the property of the Plaintiff and the property of the Defendant are adjacent to each other and they are totally different property. Moreover, the Defendant has alleged that the Plaintiffs have damaged the pipelines constructed by the Defendant over the 'C' schedule property as described in written statement and also alleged that the Plaintiffs are attempting to interfere with the peaceful possession of the Defendant over his counter claim mentioned property.

20) This being so, this Court is of the view that as the Defendant/Petitioner had levelled upon allegations as to damage of his property by the Plaintiffs, it is the duty of the Defendant to prove his case and for proving for same, the Defendant has taken a step forward by way of filing this petition to appoint a commissioner to inspect and notedown the physical features of the counter claim mentioned properties as well as for reporting the alleged damages.

21) This being so, this Court is of the view that in order to elucidate the matter in dispute between the parties to the above suit, it is deemed fit to appoint a commissioner for the purpose of inspecting and noting down the physical feature and as to the alleged damages if any over the counter claim mentioned property. It is also to be noted here that the earlier commission petition which was filed by the Plaintiff and allowed by this Court is only for the purpose of inspecting and measuring the

plaint mentioned property. However, this petition has been filed to appoint an advocate commissioner to inspect and note down the physical features of the counter claim mentioned property and to report as to the factum of damages if any over the same. Hence, this Court is inclined to allow this petition.

22) This being so, this Court is also of the view that in order to make it very convenient and simple and to avoid chaos between the parties and also to the commissioner, this Court is of the view to appoint the earlier advocate commissioner who has been appointed in the above I.A.No.3/2023 namely Mr.K.Veeramalai as the advocate commissioner in this petition as well for proper and effective inspection of the counter claim mentioned property as well. Hence, this Court is inclined to allow this petition.

Result:

In the result, with the above observations, this petition is allowed. Advocate Mr.K.Veeramalai is hereby appointed as the Advocate Commissioner. The Advocate Commissioner shall inspect the counter claim mentioned property by giving prior notice to both the parties and to note down the physical features and then to report before this Court as to the factum of damages if any by way of filing a commissioner report and plan. The commissioner remuneration is fixed at Rs.4,000/-. The Petitioner is hereby directed to pay to the commissioner his commission remuneration directly to him on or before 17.03.2026.

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 10th day of March 2026.

**Additional District Munsif,
Kulithalai.**

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

**Additional District Munsif,
Kulithalai.**