

**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 10<sup>th</sup> day of March 2026**

**I.A No.07/2026 in O.S No.148/2023**

1) Govindaraj

2) Venkatachalam

3) Natesan

**...Petitioners/Plaintiffs**

**- Vs -**

Venkatachalam

**...Respondent/Defendant**

This petition has come up for final hearing on 23.02.2026 before this Court in the presence of Mr.S.Parthipan, the Learned Counsel appearing for the Petitioners, and in the presence of the Mr.R.Krishnaswamy, the Learned Counsel appearing for the Respondent and upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

**ORDER**

This petition has been filed by the Petitioners/Plaintiffs under section 151 of CPC seeking permission of this Court to reopen the interim application in I.A.No.3/2023 filed by the Petitioners for the appointment of an advocate commissioner to inspect and measure the suit property.

**Brief averments in the affidavit:**

2) The 1<sup>st</sup> Petitioner is the 1<sup>st</sup> Plaintiff in the above suit and this petition has been filed on behalf of other Petitioners as well. The above suit has been filed by the Plaintiffs against the Defendant/Respondent herein. In the above suit, an interim

application in I.A.No.3/2023 was allowed by this Court and the commission remuneration was also paid to the Commissioner.

3) This being so, the Petitioner could not be able to meet his Counsel due to poor health condition. When the Petitioner has met his Counsel, he had stated that on 07.01.2025 itself, the above interim application has been closed. The above mistake was not an intentional one and it is a forgivable one. Hence, this petition to reopen the above I.A.No.3/2023. If this petition is not allowed, the Petitioner will be put to irreparable loss and hardships. Hence, this petition.

**Brief averments in the counter filed by the Respondent:**

4) All the allegations in the affidavit are false and denied. This petition is filed only to delay the proceedings. The Petitioner had deliberately avoided to ensure the inspection of the advocate commissioner and this Respondent had filed an application for the appointment of advocate commissioner. The allegations in para no.3 and 4 of the affidavit are all false and denied. If this petition is allowed, this Respondent will be put to irreparable loss and hardships. Therefore, this petition is liable to be dismissed with costs.

**Point for consideration:**

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

**Evidence:**

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

**Discussion:**

7) Heard both sides. Perused records. Upon perusal of records, it is seen that the above suit has been filed by the Petitioners/Plaintiffs against the

Respondent/Defendant for the relief of Permanent Injunction in respect of the suit property. It is also seen that pending this suit, the Petitioners/Plaintiffs have also filed an interim application in I.A.No.3/2023 seeking the permission of this Court to appoint an advocate commissioner for the purpose of inspection and measurement of the suit property.

**8)** Consequently, the above interim application in I.A.No.3/2023 was allowed by this Court and Advocate Mr.K.Veeramalai was appointed as the advocate commissioner. It is also seen that the above commissioner was ordered to inspect the suit property and measure the same by giving prior notice to the parties and by filing a detailed plan and report along with the surveyor plan. It is also seen that a commission remuneration Rs.8,000/- was also paid by the Petitioner herein to the advocate commissioner and a memo to that effect was also recorded by this Court on 18.10.2024.

**9)** However, upon perusal of the above interim application, it could be seen that on 10.12.2024, the advocate commissioner had filed a memo before this Court stating that the Petitioner is not co-operating with the commissioner and hence, this Court had adjourned the application for the appearance of the Petitioner. Subsequently, on the next day of hearing adjourned for appearance of the Petitioner, the Petitioner was called absent and was not represented by his counsel either. Therefore, as the Petitioner had not taken any steps to facilitate the commissioner to inspect and measure the suit property, this Court on 07.01.2025 had closed the above interim application in I.A.No.3/2023.

**10)** This being so, when the above suit was posted thereafter for trial, a separate petition has been filed by the Defendant/Respondent herein in I.A.No.6/2025 seeking this Court to appoint an advocate commissioner to inspect the property as mentioned by the Defendant in their counter claim. Subsequent to the same, this petition has

been filed by Petitioners/Plaintiffs seeking the permission of this Court to reopen the above interim application which was filed by them in I.A.No.3/2023.

**11)** The reasons stated by the Petitioner is that on the said date when the matter was posted for appearance of the Petitioners his health condition was very poor for which he could not be able to meet his counsel and hence, he could not make his presence before this Court. Subsequently only, the Petitioners when enquired about the same with their counsel, their counsel stated that the above application was closed by this Court. Therefore, the petitioner sought this Court to reopen the above interim application. Per contra, the major objection that has been raised on the side of the Respondent is that this petition is filed with an intention to prolong the above suit and hence, the Respondent sought this Court to dismiss this petition.

12) Upon careful consideration of the submissions made on both sides and upon perusal of records, it is seen that though due to the default of the Petitioner in not co-operating with the commissioner, the above interim application filed by the Petitioner in I.A.No.3/2023 was closed by this Court, despite the Petitioner was called and he was absent, this Court is of the view that opportunities must be given to the parties to the ensure complete justice and for the same, this Court is of the view that such technical irregularities happened on the side of the Petitioners may be condoned. Moreover, the reasons stated by the Petitioners for his non-appearance on the date fixed for hearing by this Court is also found reasonable and satisfactory. Therefore in the interest of justice, this Court is inclined to allow this petition. It is to be noted here that the commission remuneration was already paid by the Petitioner to the commissioner in the above interim application and therefore, this Court is of the view there is no need to pay for the commissioner afresh by the Petitioner on reopening of the above petition. Also, this Court is of the view to appoint the same advocate commissioner, who was appointed by this Court earlier in the interim application to inspect and measure the suit property by way of issuing a fresh warrant.

**Result:**

In the result, for all the above reasons stated, this petition is allowed. The interim application in I.A.No.3/2023 hereby reopened. No costs.

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 10<sup>th</sup> day of March 2026.

**Additional District Munsif,  
Kulithalai.**

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

**Additional District Munsif,  
Kulithalai.**