

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 12th day of August 2025

I.A No.06/2025 in O.S No.190/2018

1. Arumugam
2. Subramani
3. Arukkaniyammal

...Petitioners/ Plaintiffs

- Vs -

1. K.Umamaheswari
2. T.S.Kannan
3. The District Collector, Karur.
4. The Thasildar, Kadavur.

...Respondents/ Defendants

This petition has come up for final hearing on 22.07.2025 before this Court in the presence of Mr.D.Vinothkumar, the Learned Counsel appearing for the Petitioner and in the presence of Mr.V.G.Kamalesh, the Learned Counsel appearing for the Respondents 1 and 2 and the Learned Government Pleader, appearing for the Respondents No.3 and 4, upon perusal of material records and having stood over for consideration till this day, this court delivers the following:

ORDER

This petition is filed under Order 26 Rule 9 r/w Section 151 of CPC for re-issuing the commission to inspect the suit property, note down the physical feature and to submit report regarding the same.

Brief averments in the affidavit:

2) The Petitioner is the 2nd Plaintiff and this petition, is filed on behalf of other Petitioners as well. The above suit was filed for the relief of Permanent Injunction against the Respondents/Defendants. For about a period of 45 years, the Petitioner's father namely Maruthai@ Chinnu Pillai had been living over the suit property by constructing a tiled house with strong bricks and shops therein. After his death, the Petitioner's family members were in the possession of the same. In the meanwhile, the Defendants/Respondents herein interfered with the possession of the Petitioners over the suit property and hence the above suit was filed.

3) Subsequently, in the above suit, an Interim Application in I.A.No.981/2018 was filed for appointment of Court Commissioner to measure the suit property, to notedown the physical feature and for filing of report and plan and the said petition was allowed by this Court. The Court Commissioner has also filed his report. In his report, the Commissioner has not clearly specified about the physical features and location of the suit property. By specifying the above reasons and for other reasons, an Interim Application in I.A.No.09/2024 has been filed by the Petitioners to condone the delay in filing the objection for the said Commissioner's Report and that petition was also allowed by this Court and the objections placed by the Petitioners were recorded.

4) Consequently, this petition is filed in order to inspect the suit property, notedown its physical features and to measure the same, thereby re-issuing the warrant to the same Commissioner to whom the earlier warrant was issued and thereby directing the Commissioner to file his report and plan. Hence this petition.

Brief averments in the counter filed by the Respondent No.2 and adopted by the Respondent No.1:

5) All the allegations in the petition affidavit are denied as false, frivolous and vexatious. There are no merits in the petition. The Petitioners are not entitled to the

relief sought for. Already these Respondents/Defendants had categorically raised the plea in the written statement that the Petitioners/Plaintiffs have never been in the possession and enjoyment of the suit property. The earlier commission was an *ex parte* commission. The suit property was identified by the Plaintiffs. While so, the Petitioners cannot now turn back and say that the property is wrong and filed an application to appoint fresh commission.

6) Unless a prayer for scrapping of the earlier report of the Advocate Commissioner by giving proper reasons, a fresh Commissioner cannot be appointed without any basis. There are no sufficient reasons given in the petition affidavit for appointment of Advocate Commissioner afresh. No fresh warrant or the earlier warrant again to notedown the suit property be issued even to the earlier Commissioner, without assigning proper reasons.

7) Mere bald allegations are not sufficient. As per the petition affidavit, it is inferred that the suit property has not tallied with the *boosthuthi* which was already inspected by the Advocate Commissioner. After a prolonged time, the objection to the Commissioner Report cannot be entered and it is an after thought, only to fill up the lacuna and to drag on the proceedings forever. The Petitioners themselves do not know about their property and it is because the property is not at all their own. The Petitioners have no right or title over the suit property. The delay has not been properly explained and no sufficient reasons stated. Unfortunately, the delay in filing objection to the earlier Commissioner Report was allowed by this Court and on that score, the Petitioners have come forward with this fresh Commissioner Application to inspect the suit property with full of false allegations. The petition and affidavit are misleading the Court and it amounts to abuse of process of law. Hence, this petition is liable to be dismissed with cost.

Brief averments in the counter objection has filed by the Respondents

No. 3 and 4:

8) The allegations contained in the petition affidavit are legally unsustainable either in law or on facts. In the above suit, the suit property has already been inspected by the Advocate Commissioner and his Report and Plan were filed in the above suit and hence this petition is legally unsustainable. This petition is filed in order to drag on the above suit and hence this petition is to be dismissed in limine. This petition has no prima facie and without any reason it has been filed.

Point for Determination:

9) Whether the Petitioners are entitled to the relief sought for in this petition?

Evidence:

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

Discussion:

11) Heard both sides. Records perused. Upon perusal of records, it is evident that the above suit was filed by the Petitioners/Plaintiffs against the Defendants/Respondents herein for the relief of Permanent Injunction in respect of the suit property. It is also seen that when the suit was filed, at the same time, an Interim Application in I.A.No.981/18 has also been filed by the Plaintiffs for appointment of Commissioner to inspect the suit property and notedown the physical features. On the same date of filing itself, the said Interim Application in I.A.No.981/2018 was allowed by this Court and a Court Commissioner was appointed to inspect the suit property and to notedown the physical features of the same and to file a detailed report with plan. The said exparte order was passed by this Court on 18.09.2018, before issuing notice to the Respondents/Defendants in the above suit. Though it is an exparte order, this Court has specifically directed the

Commissioner to give notice to both the parties before making inspection of the suit property.

12) It is also seen that on 04.10.2018, the Advocate Commissioner has filed his Report and Plan before this Court and after that, for receiving objections on the side of both parties, sufficient opportunities were given by this Court. Admittedly the Defendants/Respondents were appeared before this Court on 25.10.2018. Despite sufficient opportunities, no objections were filed by either side and hence the above petition was closed by this Court on 15.03.2019.

13) This apart, the learned counsel for the Plaintiffs/Petitioners herein has filed an Interim Application in I.A.No.4/2024 in the above suit u/s. 151 of CPC to condone the delay in filing the objection to the above report and plan of the Advocate Commissioner and the said petition was allowed on 25.09.2024 by this Court. Thereafter, the objection placed by the Petitioners/Plaintiffs in the above suit were recorded. Also, it is seen that the learned counsel for the Respondents No.1 and 2 has filed an Interim Application in I.A.No.5/2024 in the above suit u/s. 5 of the Limitation Act r/w Sec.148 of CPC for condoning the delay in filing the objection for the above Commissioner Report and Plan. This application was also allowed by this Court on 03.09.2024 and the objections on the side of the Respondents/Defendants No.1 and 2 for the earlier Commissioner Report and Plan was recorded by this Court.

14) This apart, it is seen that on 13.02.2023, through the chief examination of PW1, the report and the plan filed by the Advocate Commissioner were marked as Ex.C1 and Ex.C2 respectively. Upon perusal of the notice given by the Advocate Commissioner to the parties herein, it is seen that the said notice was served on the Petitioners and on the Respondents No.3 and 4. However, the notice was not served on the Respondents No.1 and 2. For the same, in Ex.C1 Commissioner Report, the Commissioner has mentioned therein that he had given intimation to the Respondents No.1 and 2 and it is the 1st Respondent who had stated that on their side they have no

objection to inspect the suit property and hence they refused to take notice given by the Advocate Commissioner.

15) This being the actual position of this case, at this juncture, the Petitioners have filed by this petition to re-issue the commission to the earlier Commissioner to notedown the physical features of the suit property, on the basis of the objections placed by them earlier. It is seen that on the side of the Petitioners as well as on the side of the Respondents No.1 and 2, objections were received and recorded. Upon perusal of the objection filed by the Petitioners, it is seen that the Petitioners had objected the Commissioner's Report and Plan by stating that the Commissioner has not explained in his report about the location and physical features of the suit property and they have also objected the Commissioner's plan as wrong and confusing and had also placed some other objections that the Commissioner had missed out certain other important physical features in and around the suit property and failed to mention the same in his report and plan. On the other hand, upon perusal of the objection filed by the Respondents No.1 and 2 herein, it is seen that the Respondents No.1 and 2 had objected to the report filed by the Commissioner on the grounds that no notice was given to them at the time of inspection, the description of property, the location and identification of property is wrong and had objected that the Plaintiffs have never been in the possession and enjoyment of the property.

16) Hence, upon perusal of the above records, the objections and upon considering the submission of both parties, it is seen that on both the side, objections were placed as to the earlier report of the Commissioner. Both the Petitioners and the Respondents No.1 and 2 had objected the said report on the ground that the location and identification of the suit property were incorrect and not correctly stated by the Commissioner in his report. This apart, the major objection placed by the Petitioners is that the Commissioner had not properly and correctly noted down the physical features in and around the suit property clearly and the nature and location of the property was also not specified by him clearly. The major objection placed by

Respondents No. 1 and 2 is that the earlier commission was an ex parte commission and the location and identification of the suit property were wrong.

17) This being so, this Court is of the view that there are certain discrepancies found in the report and plan filed by the Court Commissioner which are objected by both the parties in the above suit. This Court is of the further view that though the report of the Commissioner is only an opinion and not a substantive evidence, with such discrepancies found in the Commissioner's Report and Plan as pointed out by both parties, it will be difficult for this Court in the future to rely upon the report of the Commissioner and it will also cause prejudice to both the parties. Hence, the earlier report and plan filed by the Commissioner is not found satisfactory to this Court for the reasons above stated. Therefore, in order to avoid any injustice that might happen to any of the parties herein by relying upon such report of the Commissioner with such discrepancies, this Court is of the view to issue a fresh commission to inspect the suit property and to notedown its physical features.

18) However, the earlier report and plan of the Commissioner were marked as Ex.C1 and Ex.C2 through PW1. It is pertinent to rely upon the decision of the Hon'ble High Court of Madras, governing the filed of Commissioner's Report, its evidentiary value, the scrapping of report and re-issue of fresh commission. In **R.V.Ganesa Naicker Vs Painter Selvaraj case**, the Hon'ble High Court of Madras has observed that under Order 26 Rule 18 of CPC, it is mandatory for the parties to appear before the Commissioner during the inspection. If a party is not notified and does not have the opportunity to be present, the report may be deemed inadmissible. It was also observed therein that if the Court finds the objections valid, it may either re-issue the same commission or appoint a new Commissioner ensuring that the 1st report is formally scrapped as it would result in jurisdictional error, if earlier report is not scrapped. It was also observed that issuing of several commissions and arrival at a decision on the basis of several reports is improper. In the decision of the Hon'ble High Court of Madras in **Vemba Gounder Vs Pooncholai Gounder reported in**

AIR 1996 Mad 347, it was observed that a second Commissioner should not be appointed without addressing the objections to the 1st report and superseding it for valid reasons.

19) Therefore, from the above decisions, it can be inferred that on dis-satisfaction of the earlier report filed by the Court Commissioner, a fresh commission or re-issue of commission to the earlier Commissioner has to be made, in order to avoid any jurisdictional errors and thereby ensuring that the parties have an opportunity to be heard and the Court's decision is based on a thorough and fair investigation. The flaw found in Commissioner Report should not prejudice the rights of the parties. As this Court has recorded its dis-satisfaction upon the earlier report and plan filed by the Commissioner, this Court is of the view to issue a fresh commission by scrapping the earlier Commissioner's Report and plan and inclined to issue a fresh commission to inspect the suit property and note down its physical features. Therefore, the earlier report and plan filed by the Court Commissioner and marked as Ex.C1 and Ex.C2 through PW1 is hereby scrapped.

Result:

In the result, this petition is allowed. Advocate Mr.D.Shyam Sundar is hereby appointed as a new Commissioner. The Commissioner is hereby directed to issue notice to both the parties herein before inspecting the suit property. Further the Commissioner is directed to inspect the suit property and note down all its physical features in and around the suit property and to submit a detailed report and plan regarding the same. The Petitioners are hereby directed to pay a Commissioner remuneration of Rs.4,000/- to the Commissioner on or before 22.08.2025 failing which, this order shall stand automatically vacated. 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 12th day of August 2025.

Sd/-A.Yughathymariya
Additional District Munsif,
Kulithalai.

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

Sd/-A.Yughathymariya
Additional District Munsif,
Kulithalai.

