

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.

Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)

District Munisf, Vadipatti

Dated this the 06th day of August 2025

IA. No.02 / 2024

In

O.S. No.56 / 2024

CNR. No.TNMD190000872024

1. Nagathevan,
S/o. Muthuthevar
2. Ramesh,
S/o. Nagathevan
3. Logumani,
S/o. Nagathevan
4. Vetri Selvan,
S/o. Nagathevan

---- Petitioners / Plaintiffs

//Versus//

1. N. Karnan,
S/o. Nalluthevar
2. R. Mayan,
S/o. Rajangam

---- Respondents / Defendants

This petition was filed before this Court on 19.07.2024 coming before me for final hearing on 06.08.2025, Advocate Thiru. M. Muthupandi appeared for Petitioner / Plaintiff. Advocate Thiru. A.K. Nagarajan appeared for 1st Respondent / 1st Defendant. Advocate Thiru. P. Chandramohan appeared for R2/D2. Upon hearing the arguments advanced by both the sides' counsel and upon perusing the available material records, today this Court has delivered the following....

ORDER

1. The petition was filed under order. 26 rule. 9 and section 151 of C.P.C. to appoint an advocate commissioner to inspect and to measure the encroachment portion in the petition schedule property and to file a report with plan.

2. **Petition averments in brief:**

The petitioner was the plaintiff in the main suit. The main suit was filed for permanent injunction. The petitioner's further contention was that, the petitioner was in possession of the petition property. The respondent was the adjacent land owner had encroached and was disturbing the possession of the petitioners. Thereby this petition was filed for appointment of advocate commissioner to measure, inspect and to note down the physical features of the petition mentioned property to bring the nature of the petition property before this court for proper adjudication in the main suit.

3. **Counter averments in brief:**

The respondent challenged the petition by denying the entire averments of the petition. Further the respondent contended that, advocate commissioner cannot be appointed to find out the possession of the property, which has to be adjudicated only by oral and documentary evidence. Hence there was no necessity to appoint advocate commissioner, this petition was filed without any merit and is liable to be dismissed.

4. Both side parties did not let in any evidence on their side.
5. **Point to determination:** Whether the petitioner is entitled for appointment of advocate commissioner as sought for?
 - i. Heard both sides. Records perused. The main suit was in the stage of framing issues. Admittedly, the main case was filed for permanent injunction. This petition was filed for appointment of advocate commissioner to measure the property, to note down the physical features of the petition schedule property. The respondents filed counter stating that this petition to appoint advocate commissioner was not at all necessary, as it amounts to collection of evidence.
 - ii. The learned petitioners counsel argued that this petition was filed to appoint an advocate commissioner to visit, measure and note down the physical features of the petition premises to bring the nature of the petition schedule property before this court for proper adjudication of main suit.
 - iii. On the other hand, the learned respondent counsel opposed the petition by stating that the petition was filed only to delay the suit proceedings, the entire possession of the petition property was with the respondent. Hence the advocate commissioner need not be appointed in this petition to inspect the property to find out the possession of the property, as it amounts to collection of evidence.
6. Under order 26 rule 9 of C.P.C., if the court find it fit, an advocate commissioner may be appointed for inspecting and surveying the suit property, to elucidate any matter in dispute. In this regard, **our Hon'ble High Court in S.Anand**

V. A.Jeyabalan (2020 (1) CTC 182), had directed that, advocate commissioner cannot be appointed to collect evidence or to find out the possessor of the property.

7. In the present case in hand, the suit was filed by the petitioner / plaintiff for permanent Injunction in respect of the petition schedule property. The respondent / defendant had denied the petitioners' possession and claim that entire petition property was in his possession.

8. Considering both side rival submissions, it is found that the petitioners contention was that this petition was filed only to bring out the measurement of encroachment and physical features of the petition schedule property. On the other hand, the respondent refused that this petition was filed to prove possession hence petition cannot be allowed. The prayer sought by the petitioners clearly shows that the petitioner wants to appoint advocate commissioner to bring out the nature of the petition schedule property.

9. Admittedly, the petitioner filed this suit for permanent injunction in respect of the petition schedule property. Hence there can be no dispute with regard to the boundaries and location of the petition schedule property thereby measuring the suit property is not necessary. From the above discussion, this court is of the view that, it is just and necessary to bring the nature of petition schedule property before this court for proper adjudication. Hence to take photographs and note down the physical features of the petition schedule property, appointing an advocate commissioner is necessary. Thus allowing this petition would not cause any impediment to the respondent to proceed with the suit proceedings, but only aid this court to decide this main suit.

10. Thereby, advocate Thiru. Kasinathan is appointed as advocate commissioner to inspect the petition schedule properties in the presence of both side parties and to take photographs and to file report with plan. Advocate remuneration is fixed as Rs.6,000/-. Commissioner warrant shall be issued after depositing the commissioner remuneration on or before next hearing of the main suit. Advocate Commissioner shall withdraw the remuneration after filing commissioner report.

11. **In the result**, petition is partly allowed. No costs. (Commissioner remuneration shall be deposited on or before next hearing in the main suit.)

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on **06th day of August 2025**.

District Munsif,
Vadipatti.

Petitioner side evidence and documents: Nil

Respondent side evidence and documents: Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT

Vadipatti

Fair Order/~~Draft Order~~

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Date :06.08.2025