

**IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.****Present** : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)

District Munsif, Vadipatti

**Dated this the 20<sup>th</sup> day of February 2026****IA. No.01/2026****In****O.S. No.102/2011****CNR. No.TNMD190001222011**

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1. Kanchana,  
W/o. Madhavan
2. Madhavan,  
S/o. Venkataraman Poosari

**---- Petitioners/ Plaintiffs****//Versus//**

1. Athimuthian
2. Thandeeswaran
3. The District Collector, Madurai.
4. The Thasildar, Madurai.
5. The Village Administrative Officer,  
Vadipatti Taluk, Madurai.

**---- Respondents / Defendants**

This petition was filed before this Court on 02.02.2026 coming before me for final hearing on 20.02.2026, Advocate Thiru. B. Venkatesh appeared for Petitioners / Plaintiffs. Advocate Thiru. K. Santhanakaruppasamy appeared for R1 and R2 / D1 and D2. Learned Government Pleader appeared for R3 to R5 / D3 to D5. 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 the petition mentioned property and the neighboring properties to find the encroachment portion in the petition 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 declaration, mandatory injunction and consequential injunction. The petitioner's further contention was that, the petition property was the common pathway in S.No.263/1 that start from main road, running 4000ft and ends in the petitioners land. The above pathway was of breath 10ft and it belong to the Government. Being so, the 1<sup>st</sup> and 2<sup>nd</sup> respondents being adjacent land owner had built a hut by encroaching the petition property to an extent of 151sq.ft. and prevented the petitioner and other farmers from accessing the pathway to reach their property. Thereby this petition was filed for appointment of advocate commissioner to inspect the petition property and its neighboring properties to find out the encroachment in the petition property to bring the nature of the petition property before this Hon'ble court for proper adjudication.

3. **Counter averments in brief: (Counter not filed by 3, 4 respondents)**

The respondents 1 and 2 challenged the petition by denying the entire averments of the petition. Further the respondent contended that, the property in dispute was not a government wasteland but it was purchased by the 1<sup>st</sup> respondent out of 80 cents in S.No.263/1. Later it was subdivided as S.No. 263/1A and patta no.1407 was also issued. Since then 1<sup>st</sup> respondent was in possession and enjoyment of the property. Subsequently, Original Suit in O.S. No.233 of 2013 was filed against the petitioner, the same was decreed in favour of the 1<sup>st</sup> respondent. No evidence was let in by the petitioner to show that the suit property in Survey No.263/1 has a common pathway. Thereby this petition was only filed to delay the suit proceedings. Thus the 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. The petitioners did not let in any evidence in this proceedings. The respondents 1 and 2 to prove their case had marked 4 documents; Ex.R1 was the Adangal, Ex.R.2 was the Memorandum of Deputy Tahsildar, Vadipatti, Ex.R.3 was the Memorandum of Revenue Divisional Commissioner, Madurai and Ex.R.4 was the Judgment in O.S. No.233 of 2013.

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 trial. Admittedly, the main case was filed for declaration and consequential permanent injunction. This petition was filed for appointment of advocate commissioner to inspect the petition schedule property to find the encroachment made by the 1<sup>st</sup> respondent. The respondents 1 and 2 filed counter stating that this petition to appoint advocate commissioner was not at all necessary, as the suit property was not at all government pathway but it was patta land.

ii. The learned petitioners counsel argued that this petition was filed to appoint an advocate commissioner to inspect 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 counsel for respondents 1 and 2 opposed the petition by stating that the petition was filed only to delay the suit proceedings, the disputed land in the petition property was not a government waste land. Thereby the petitioner cannot claim it as a common pathway, as the property was already purchased by the 1<sup>st</sup> respondent and he is in lawful possession of the property. Hence the advocate commissioner need not be appointed in this petition to inspect the property.

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 declaration of pathway, permanent injunction and mandatory injunction to remove the encroachment made by the respondents in the petition schedule property. The respondents 1 and 2 / defendants 1 and 2 had denied the petitioners' possession and claim that the land in dispute was not common pathway but a part of the suit property was purchased by them and they were in its possession.

8. Considering both sides' rival submissions, it is found that the plaintiff's contention was that this petition was filed only to bring out the physical features of the petition schedule property and to find out the encroachment made by the respondents. On the other hand, the respondents 1 and 2 refused that this petition was filed on false grounds and hence this petition cannot be allowed and filed 4 documents to substantiate their case. Ex.R.1 – Adangal shows that S.No.263/1 with an extent of 80 cents was in possession of the previous vendor of the 1<sup>st</sup> respondent, Ex.R.2 and Ex.R.3 were the memorandum of the revenue official discloses that the property in dispute was not the government wasteland and mentioned as patta land. Ex.R.4 was the Judgment in OS. No.233/2013 passed by this court against the petitioner in respect of the suit property in this suit. The prayer sought by the petitioner 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 declaration and permanent injunction in respect of the petition schedule property. There is no dispute with regard to the boundaries and survey number of the petition schedule property but the petitioner claim as the 1<sup>st</sup> respondent had made encroachment in the petition property by building a hut in the government wasteland, which is utilized by the petitioner as well as by the farmers of that village to access their

properties. But it was denied by the respondents 1 and 2 by alleging that the property claimed to be as a pathway was belonged to 1<sup>st</sup> respondent by patta. On the other hand, the respondents 1 and 2 had relied upon 4 documents to prove their case. From appreciation of such documents, this court can find that the revenue authorities in their order had refused the property in dispute was not government wasteland but those were patta lands. Further from the contention of the petitioner, it is clear that the petitioner plead as the suit property was government pathway. Also the petitioner had categorically mentioned the nature and extent of the encroachment made by the 1<sup>st</sup> respondent. This fact can be very well proved through revenue documents, FMB and photographs of the property.

10. In such scenario, as the case of the petitioners can be possibly proved by documents, appointing an advocate commissioner would only be a futile exercise. The suit was of the year 2011, trial had not yet begun, being so, as the facts pleaded by the petitioner have the entire possibility of proving by documentary evidence and other independent witnesses, appointing advocate commissioner is not necessary in this case.

11. **In the result**, petition is dismissed. No costs.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on **20<sup>th</sup> day of February 2026**.

District Munsif,  
Vadipatti.

**Petitioner side evidence and documents: Nil**

**Respondents side witnesses: Nil**

**Respondents side documents:**

Ex.R1	Adangal
Ex.R.2	Memorandum of Deputy Tahsildar, Vadipatti
Ex.R.3	Memorandum of Revenue Divisional Commissioner, Madurai

Ex.R.4	Judgment in O.S. No.233 of 2013
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District Munsif,  
Vadipatti.

DISTRICT MUNSIF COURT  
Vadipatti  
*Fair Order/~~Draft Order~~*  
*IA. No.01/2026*  
*In*  
*O.S. No.102/2011*  
**Date :20.02.2026**