

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 18th day of March 2026

IA. No.03 / 2025

In

O.S. No.115 / 2025

CNR. No.TNMD190001252025

1. Periyasamy @ Balu,
S/o. Periyagounder

---- *Petitioner / Defendant*

//Versus//

1. R. Maharajan,
S/o. Ramasamy

---- *Respondent / Plaintiff*

This petition was filed before this Court on 18.12.2025 coming before me for final hearing on 18.03.2026 Advocate Thiru. Mrs. C. Sumitha appeared for Petitioner / Defendant, Advocate Mr. N. Sadaimuni appeared for Respondent / Plaintiff. Upon perusing the available material records, since the parties and facts are common to all the petitions, today this Court has delivered the following....

ORDER

1. This petition was filed by the petitioner / defendant under order 26 rule 9 of cpc to appoint a new advocate commissioner to inspect, measure, take photographs and note down the physical features of the suit property and petition mentioned property to bring the nature of the property.

2. Petition averments in brief:

i. The petitioner was the defendant in the main suit, that was filed by the respondent / plaintiff for permanent injunction. The petitioner contended that the property mentioned in the suit was different from this petitioners property. But the respondent / plaintiff claim to be in possession of the petition property. Thus it is necessary for this petitioner to file this present petition to appoint an advocate commissioner to inspect, measure, take photographs and note down the physical features of the suit property and petition mentioned property to bring the nature of the property.

3. Counter averments in brief:

i. The respondent / plaintiff in his counter had denied all the averments of the petition. The respondent without any right over the petition property claimed to be in possession of petition property as it was purchased by one jeyaraj. Further the suit in O.S. No.42 of 2010 was not filed in respect of the suit property in S.No.361/48. Thereby this petition filed by the petitioner was unnecessary and filed only to delay the suit proceedings. Thus the petition is liable to be dismissed.

4. The petitioner to prove their case had filed 4 documents. On the other hand the respondents to prove their case had filed 10 documents.

5. **Point to determine:** 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 permanent injunction. This petition was filed for appointment of advocate commissioner to prove the petition property was in the disputed portion in suit schedule and to prove the possession. The respondents filed counter stating this petition to appoint advocate commissioner was not at all necessary.

ii. The learned petitioner counsel argued that this petition was filed to appoint an advocate commissioner to visit and measure the petition premises as well as the

respondent's property to prove the nature of petition property before this court along with its dimensions and to prove its possession.

iii. On the other hand, the learned respondent counsel opposed the petition by stating that the petition was filed only to collect evidence, the possession of the petition property was with the respondent. Hence, advocate commissioner shall not be appointed and this petition must be dismissed.

iv. 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.

v. In the case in hand, the suit was filed by the petitioner / plaintiff for permanent injunction. The respondent / defendant had denied the petitioner's possession and argued that the petition property was not in possession of third party, the respondent cannot sought right over the petition property.

vi. Considering the both side rival submissions, it is found that the petitioner contention was that this petition was filed for appointment of advocate commissioner to disprove the possession of the disputed portion claimed by the respondent in suit schedule mentioned and to bring the nature of the suit property and the petition property. The prayer sought by the petitioner clearly shows that the petitioner wants to appoint advocate commissioner to prove the possession but both the sides have not raised any dispute regarding the location and extent of the property. In such scenario, since the main suit was only filed for permanent injunction, the petitioner / respondent shall only prove the case by adducing evidence to prove his claim. But appointing advocate commissioner in this suit for permanent injunction would only amount to prove the possession in the suit property. The documents filed by both the sides were not relevant documents to decide this present issue in hand.

vii. In this regard **Our Hon'ble High Court in S.Anand V. A.Jeyabalan (2020 (1) CTC 182)**, had decided that advocate commissioner cannot be appointed by court for collecting evidence. The petitioner can very well prove the possession by letting in evidence. At this juncture, considering the facts and circumstances of the case, as the main case was filed only for permanent injunction, this court cannot find any necessity to appoint advocate commissioner to measure the petition property as well as the suit property to prove possession. Thus, this court finds appointing an advocate commissioner at this stage would amount to collection of evidence alone but would not aid this court in deciding the case. Hence this petition cannot be allowed.

6. ***In the result***, this petition is dismissed, no costs.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on **18th day of March 2026**.

District Munsif,
Vadipatti.

1.Petitioner side witness and documents: Nil

2.Petitioner side documents:

1.	Sale deed dated 09.03.2000
2.	Patta No.502 for S.No.367/47B
3.	VAO certificate for Boundaries in the S.No.361 / 47B
4.	Service Details
5.	Patta No.239 for S.No.361/48
6.	Photographs
7.	Judgment in O.S. No.228 of 2002
8.	Decree in O.S. No.228 of 2002
9.	Judgment in AS. No.3 of 2009

10.	Decree in AS. No.3 of 2009
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2. Respondent side witness: Nil

3. Respondent side documents:

1.	Patta No.239
2.	House Tax receipt
3.	Sale Deed dated 14.02.2014
4.	Encumbrance Certificate

District Munsif,
Vadipatti.

Fair Order / ~~Draft Order~~

DISTRICT MUNSIF COURT

Vadipatti

Fair Order / ~~Draft Order~~

IA. No.3 of 2025

In

O.S. No.115/2025

Date :18.03.2026