

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 13th day of March 2026**CNR No. TNMD190001922024****IA. No.2/2024****In****O.S. No.135/2024**

1. M. Ilaiyaraja,
S/o. Muniyandi

---- Petitioner / Defendant

//Versus//

1. M. Sundari,
W/o. Murugan

---- Respondent / Plaintiff

This petition was filed before this Court on 17.11.2025 coming before me for final hearing on 13.03.2026, Advocate Thiru. Karthick Kumar appeared for the Petitioner / Defendant. Advocate Thiru. M. Gokulnath appeared for the Respondent / Plaintiff. 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 petition schedule property and to file a report with plan.

2. **Petition averments in brief:**

The petitioner was the defendant in the main suit. The main suit was filed for permanent injunction. The petitioner's / defendant's further contention was that, the petition property was purchased by the petitioner / defendant and was in its possession for more than 30 years. The petitioner / defendant had built his house even before the respondent / plaintiff had purchased her property. The respondent / plaintiff had pleaded as the 3 items of suit properties were vacant lands but the suit properties remain as plots. On inspection by advocate commissioner will bring out the present location and physical features of the suit property. Hence the petitioner filed this petition to appoint an advocate commissioner to measure the petition schedule property with the aid of revenue officials, to find out the possession and to file a report with plan.

3. **Counter averments in brief:**

The respondent denied the petition facts and contend that the petitioner had never built his house in the 1st item of the suit property. The respondent had already obtained interim injunction against the petitioner. The respondent had not pleaded the suit property as vacant plot. The petitioner without any right over the suit property had sought to appoint advocate commissioner to find out possession. Thus 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 the sides did not let in any evidence in this proceedings.

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 of issues. Admittedly, the main case was filed for permanent injunction. This petition was filed by the petitioner / defendant for appointment of advocate commissioner to inspect, measure and to

note down the physical features of the petition properties. The respondent / plaintiff filed counter stating that the petitioner without any right over the suit property had filed this petition to appoint advocate commissioner, which was not at all necessary, hence prayed to dismiss the petition.

ii. The learned petitioner / defendant counsel argued that this petition was filed to appoint an advocate commissioner to visit, measure and to 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 / plaintiff counsel opposed the petition by stating that the petition was filed only to delay the suit proceedings, the respondent / plaintiff was in possession of the suit properties and the dispute in respect of the petition properties can only be resolved by measuring the petition properties with a aid of revenue records from both side parties.

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 present case in hand, the suit was filed by the respondent / defendant for permanent injunction. Hence the possession and disturbance made in the suit property need to be proved.

vi. 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 by measuring the suit property with aid of revenue officials. On the other hand, the respondents refused that this petition was filed without any merit as the petitioner / defendant

had no right over the suit property, hence this petition cannot be allowed. The prayer sought by the petitioner clearly shows that the petitioner wants to appoint advocate commissioner to bring out the possession of the schedule property.

vii. Admittedly, the main suit was filed for permanent injunction in respect of the petition schedule property. There is no dispute with regard to the boundaries or location of the property. The petition prayer was clear that it was filed to find out the possession of the suit property. The relief sought by the petitioner to find out the possessor of the suit property was against the law laid by Hon'ble High Court as referred above. Thus in suit for permanent injunction, advocate commissioner cannot be appointed to find out the possession of the suit property.

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

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on *13th day of March 2026*.

District Munsif,
Vadipatti.

Petitioner side witness and documents: Nil

Respondents side witness and documents: Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT
Vadipatti
Fair Order/~~Draft Order~~
IA. No.04/2025
In
O.S. No.135/2024
Date :13.03.2026