

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 01st day of August 2025**IA. No.05 / 2025****In****O.S. No.103 / 2015****CNR. No.TNMD190001952015**

A. Geethamani,

W/o. Alagumalai

---- Petitioner/ Plaintiff**//Versus//**

1. R. Thangam (Died),
S/o. Rajeethevar
2. T. Pasumbon,
W/o. Late. R. Thangam
3. T. Jeyakumar,
S/o. Late. R. Thangam
4. T. Jeyaram,
S/o. Late. R. Thangam

---- Respondents / Defendants

This petition was filed before this Court on 08.07.2025 coming before me for final hearing on 01.08.2025, Advocate Thiru. M. Thiyagarajan appeared for Petitioner / Plaintiff, Advocate Thiru. P. Ganesan appeared for the Respondents / Defendants. Upon hearing the arguments advanced by the both side counsels 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, measure 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 petition property was purchased by the petitioner from N.K.P. Subramanian and N.K.P. Kodipuli. From then the petitioner was in possession of the petition property. The brother of petitioner's husband and the respondents were disturbing the possession of the petitioners by throwing garbage, trying to tie a cow and also to put up a haystack in the petition schedule property. Thereby this petition was filed for appointment of advocate commissioner to inspect and to note down the physical features of the petition mentioned property, to measure the property with aid of surveyor, to bring the nature of the petition property before this court for proper adjudication.

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 trial. Admittedly, the main case was filed for permanent injunction. This petition was filed for appointment of

advocate commissioner to visit, measure and 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.

ii. The learned petitioners counsel argued that this petition was filed to appoint an advocate commissioner to visit 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 as the advocate commissioner cannot be appointed 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 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 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 the main suit for permanent injunction in respect of the petition schedule property. But there is no dispute with regard to the boundaries and survey number of the petition schedule property. In view of 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 inspect, 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. Manivannan is appointed as advocate commissioner to inspect the petition schedule properties in 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 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 *01st day of August 2025*.

District Munsif,
Vadipatti.

Petitioner side evidence and documents: Nil

Respondents side evidence and documents: Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT
Vadipatti
Fair Order/~~Draft Order~~
IA. No.05/2025
In
O.S. No.103/2015
Date :01.08.2025