

IN THE COURT OF THE SUBORDINATE JUDGE, MELUR.

Present: Tmt. M. SAMUNDEESWARI PRABHA, M.A., M.L.,

Monday, the 11th day of August 2025

I.A.No.3/2024

in

AS.No.38/2024

P. Sivalingam

..... Petitioners/ Appellant

// Vs //

1. V. Velli (Died)

2. The State Represented through it's

District Collector,

Madurai District,

Madurai.

3. The Tahsildhar,

Melur Taluk,

Madurai District.

4. V.Pappathi

5. V.Poongodi

6. V.Arjunan

..... Respondents/ Respondents

This petition coming up for final hearing before this court on 28.07.2025 in the presence of Advocate.Mr.M.Jeyaraman, Advocate for the Petitioner and Advocate.Mr.B.Murugan, Advocate for the 4th to 6th respondents and Advocate.Mr.K.Sabapathy, Additional Government Pleader Advocate for the 2nd and 3rd respondents and the 1st respondent was died and upon hearing the enquiry on both sides and on perusal of the records and having stood over for consideration till this day, this court delivers the following :-

ORDER

This petition has been filed Under Order 26 Rule 9 and Section 151 of CPC pass an order to appoint advocate commissioner to measure the Appeal suit property as per the four boundaries stood in the sale deed dated 19.12.1990 and note down the physical features with help of qualified surveyor with revenue officials.

1. Brief averments of this petition :-

(I) The petitioner herein is the Appellant in the main Appeal. The petitioner have filed the main suit for Declaration and Injunction in OS.No.12/2013 on the file of the District Munsif Court, Melur as against the original 1st Respondent (Since Deceased) and after demise of him, his legal heirs 4th to 6th Respondents. The crux of the main suit in nutshell is as follows that the suit property originally belonged to the 1st Defendant V. Velli (Since deceased) and who had sold the same by virtue of a registered sale deed dated 19.12.1990 in favour of the petitioner for a valuable consideration and thereafter, the petitioner have been possession and enjoyment of the suit property by digging well and

cultivating the coconut trees and palm trees in the suit property without any let or hindrance from anybody else.

(ii) Even though the petitioner had purchased the suit property by virtue of a registered sale deed dated 19.12.1990, the revenue records with regard to the suit property not mutated in his name and in 2012 onwards the petitioner had approached the Revenue officials for getting Patta in his name and after perusing in his title deed by the revenue officials told me that the wrong survey Number has been mentioned in the sale deed dated 19.12.1990 and thereafter he had approached the 1st Defendant V. Velli for the registration of rectification deed for the sale deed dated 19.12.1990 and he was also initially accepted to do so and thereafter evading in executing the rectification deed with regard to the suit property by demanding huge some for the same.

(iii) The 1st Defendant V. Velli after knowing wrong Survey Number in the sale deed dated 19.12.1990 in S.No.35/3 in Silambakonpatti Village instead of Survey Nos. 28/2C, 28/3B and 28/3A trying to interfere his possession and enjoyment over the suit property and all the negotiations between himself and 1st Defendant V.Velli were went in to Vain and filed the present suit for the Declaration and Injunction against the 1st Defendant V.Velli initially and after his demise, the 4th to 6th, Respondents were brought on records that the suit property absolutely belonged to the petitioner. After the trial brushing aside the petitioner relief sought in the suit by decree an judgment dated 18.09.2024 on the ground that the sale deed dated 19.12.1990 not proved and aggrieved by the same filed the present

appeal to set aside decree and judgment dated 18.09.2024. That the court below has miserably failed the admission of the 1st Defendant in his evidence as DW1 that four boundaries correlated in the sale deed dated 19.12.1990 and the admitted evidence of the DWI that the Appeal suit property belonged to the petitioner as follows.

(iv) The 4th to 6th Respondents taking advantage of the suit in O.S.No.12/2013 dismissed on 18.09.2024, they are taking hectic steps to sell the Appeal suit property to the 3rd parties in order to encumber the same. The four boundaries with regard to the suit property belonged to the 1st Defendant V. Velli and on that score he had executed the sale deed dated 19.12.1990 by quating wrong survey number instead of correct survey Numbers owned by him. If the Appeal suit property is measured and note down the physical features with help of qualified surveyor with help revenue officials in presence of an Advocate commissioner, the four boundaries stood in the sale deed dated 19.12.1990 would be identified the Appeal suit property and to which the deceased sold by virtue of a registered sale deed dated 19.12.1990 in his favour.

(v) In respect of any dispute with regard to the wrong survey numbers instead of correct survey number is concern the four boundaries alone will prevail over survey number on that score the Appeal suit property has to be measured by appointing an Advocate commissioner with help of qualified surveyor and Revenue officials with regard to the suit property stood in the sale deed dated 19.12.1990 proved that the deceased 1st Defendant had executed his property by

quoting wrong survey No.35/3 in Silampakkonepatti Village instead of the property stood in survey numbers 28/2C, 28/3B and 28/3E or any other property belonged to him in the Silambakonpatti revenue Village. Hence this petition has to be allowed.

2. Brief averments of the Counter Affidavit filed by the 4th to 6th Respondents/ Respondents :-

(I) The 6th respondent herein. The 6th respondent filed this counter affidavit for himself and on behalf of her mother and sister namely 4th and 5th respondents. Save and except those that all admitted specifically and all other allegation made in the petition is all hereby denied as false. This application is not maintainable either on law or on facts. The petitioner/appellant has filed a suit for declaration and for consequential relief of injunction in respect of the property comprised in S.No.35/3 to the total extent of 60 cents as if he was purchased the same from her father on 19.12.1990 and in pursuance of the sale he was put in S.No. 35/3. As a matter of fact the property comprised in the sale deed or the extent comprised in S.No.35/3 is no way connected with his father. Further it is specific defense made by her father that he never executed any sale deed infavour of the plaintiff further he is the not owner of the property comprised in the sale deed. As such the signature found place in the sale deed dated 19.12.1990 referred by the plaintiff is also fabricated one. Further the property belongs to her father is available at his hands and he is owner of only the extents comprised in S.No.28/2C, 28/3B and 28/3E to the total extent of 64 cents as patta No.262. Further he is in possession of the 64 cents comprised in Patta

No.262 by raising 28 Coconut Trees. Further there is no 40 Coconut Trees and 15 Farm Trees as alleged by the plaintiff in his land. After considering the all facts and circumstances of the case as well as oral and documentary evidence adduced by us, the lower court has decided all the issues as against the plaintiff and ultimately dismissed the suit by Judgment and decree dated 12.09.2024.

(ii) During pendency of the suit her father namely 1st defendant in the suit died intestate leaving ourselves as legal heirs as such we have impleaded as 4th to 6th defendants. Further after demise of her father individual patta was assigned in her favour by the consent of her mother and sister. After demise of the 6th respondent father to meet out the medical expenses spent by her to save her father from his ailments and to discharge the other family sundry debts, the 6th respondent constrained to alienate the property inherited by her comprised in New Patta No.589 infavour of Mr.P.Selvam son of Patchai on 17.02.2025 vide document No. 498/2025 registered with Karunkalakudi SRO and also entrusted the actual possession of the property comprised in the sale at the hands of purchaser. Now he is in possession and enjoyment of the property purchased from the 6th respondent and patta also assigned in his name. Under these circumstances the application filed by the petitioner/appellant for interim injunction as if he is possession of the property comprised in S.No.35/3 is legally unsustainable. Further the pleadings of the plaintiff as if he raised 15 Farm Trees and 40 Coconut Trees is not at all available either the so called S.No.35/3 or the property owned by the respondent comprised in S.No.28/2C, 28/3B and 28/3E.

On the other hand her father has raised only 28 Coconut Trees in the property owned by him. Under these circumstances application the made by the petitioner/Appellant either for interim injunction or to inspect the suit property and file a report by way of appointment of advocate/commissioner is legally unsustainable, it is dubious attempt on the part of petitioner to create some self serving evidence. As stated already the boundary, extent, survey number, available standing trees is all totally differ from the pleadings of the appellant or the property owned and alienated by the 6th respondent. Under these circumstances the question of appointment of advocate/commissioner is no way help to decide the appeal. Hence this petition has to be dismissed with costs.

3. The point for consideration aroused is that:-

Whether the petition has to be allowed or not ?

4. Point :-

Both sides heard. Records perused. This petition has been filed for appointment of advocate commissioner to measure the suit property in S.No:- 35/3 in Silambakonpatti Village. It is alleged in the petition that S.No:- 35/3 was wrongly mentioned in S.No:- 28/2C, 28/3B and 28/3A. It is also alleged that the rectification of the S.No:- 35/3 in the sale deed dated 19.12.1990 has not been done.

Hence appointment of advocate commissioner to measure the suit property in S.No:- 35/3 is of no use. It is allegedly stated that wrong survey number was mentioned in the sale deed dated 19.12.1990 which didn't belong to the respondent's father. Hence merely surveying the

suit property in this case is of no use and it is unnecessary to the suit proceedings.

The appellant has to prove his case by way of adducing evidences and not by way of appointing an advocate commissioner to survey the land which has wrongly purchased.

5. Result:-

In the result, this petition is dismissed. No costs.

Dictated to the Steno Typist by me, and typed by her directly, corrected and pronounced by me in open court, this the 11th day of August 2025.

**Sub Judge,
Melur.**

Petitioners / Respondents both sides of witness and documents :-Nil

**Sub Judge,
Melur.**

**Draft/Fair Order
in
I.A.No.3/2024
in
A.S.No.38/2024
Date: 11.08.2025
Sub Court, Melur**