

IN THE COURT OF THE DISTRICT MUNSIF, KUMARAPALAYAM
Present: Selvi. T. Naveena B.com. L.L.B (Hons).,
District Munsif,
Kumarapalayam.

Tuesday the 08th day of July 2025

I.A. No.02/2023

IN

O.S. No.72/2023

1. P. Krishnan,
2. Rani

Petitioners/Plaintiffs

...
/Vs/

1. Nagalakshmi,
2. Srinivasan,
3. Nagarathnam,
4. Krishnaveni,
5. N.S.K.Karunakaran,
6. The Commissioner,
Kumarapalayam Municipality,
Kumarapalayam.

Respondents/Defendants

This petition came for final hearing before this court on 08.07.2025 in the presence of Thiru S. Shanmugam, Advocate for the Petitioners/Plaintiffs and Thiru V. Sivasubramanian, Advocate for the Respondents 1 to 5/Defendants 1 to 5 and Thiru N. Manivasakam (Government Pleader) for the 6th Respondents/6th Defendants and upon perusal of material records and having stood over for consideration till this date, this court delivers the following:

ORDER

This petition has been filed Under Order XXVI Rule 9 of Code of Civil Procedure

1. BRIEF FACTS OF THE PETITION WOULD RUN AS FOLLOWS:

The petitioner has filed the above suit for Declaration, Demarcation of Boundaries and Permanent injunction. The suit lane is enjoyed by the petitioners and the respondents 1 to 4 in common and maintained by the 6th respondent. The 5th respondent has not used and was not allowed to use the suit lane at any time. To the house and factory of the 5th respondent situated on the northern side of the suit lane, the 5th respondent has access to the lanes to the north and west of the same. The 5th respondent had encroached the suit lane and raised structures while he re-constructed his house and factory. The respondents 1 to 4 had

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built steps and sunshade encroaching the suit lane while re-constructing their house and had reduced the width of the suit lane.

The petitioner is unable to paint the East and South side walls of his house. In spite of direct request and the legal notice sent to the respondents 1 to 5, they had not cooperated with the same. The 6th respondent, who must maintain the suit lane without encroachments had also not questioned the act of the respondents 1 to 5.

Since appointment of an advocate commissioner is essential for reaching finality to the issues in the suit and to establish the facts of the case before the court, the petitioner prayed to allow this petition and appoint an Advocate Commissioner to visit the suit property and file a report and plan of the physical features of the suit property.

2. The 6th respondent stated to have no objections in appointment of an Advocate Commissioner.

3. **BRIEF FACTS OF THE COUNTER STATEMENT OF THE RESPONDENTS 1 TO 4 AND 5TH RESPONDENT WOULD RUN AS FOLLOWS:**

The respondents 1 to 4 denied the allegations made by the petitioners except those admitted as true. The respondents herein alleged that the petitioners have not described the East West length and North South length of the suit lane or the specific measurement of the alleged encroachment and stated that the suit lane comes under Ward B, Block 4, Town Survey No.27 with an extent of 64 square meters.

The respondents have been using and were allowed by the respondents to use the suit lane as ingress and egress to reach his property from the Kaveri road. The petitioners have to prove how they had acquired right in the suit lane while no recitals are found in the Sale deed dated 01.02.1995.

There is no encroachment as alleged by the petitioners and the steps and sun shade are well within boundaries and a compound wall running North South divides the properties of the petitioners and respondents. On 15.12.2003, the petitioners, the 2nd respondent and his brother entered into a Panchayat Muchalika deed whereby they agreed to enjoy the vacant land of width 1 feet 7½ inch each and length of 21½ feet on the western and eastern side. The petitioners had agreed to the respondents to use steps and raise compound wall on

western side of the vacant land within 1 feet 7½ inch and the same cannot be termed as encroachment.

The petitioners have encroached the suit lane by both east west and north south beyond the extent of purchase of east west length of 18.3. meter and north south length of 6.7 meters. And had built their house. The respondents herein denied that the appointment of an Advocate Commissioner would enlighten the true facts and reduce the burden of examining the witnesses and pleaded to appoint an Advocate Commissioner with direction to measure the property with a qualified surveyor.

3. ISSUES: Whether or not this petition filed Under Order XXVI Rule 9 of CPC be allowed?

4. DISCUSSION:

Heard. Records perused. The petitioners have filed the above suit for Declaration, Demarcation of boundaries and Permanent injunction. The petitioner claimed that the respondents 1 to 4 had built steps and sunshade encroaching the suit lane and the 5th respondent had encroached the suit lane and raised structures while re-constructing their houses and factory and requested to appoint an Advocate Commissioner to visit the suit property and file a report and plan to establish the same before the court and reach finality to the issues in the suit. The main objection raised by the respondents is that only the petitioners had encroached the suit lane and requested to appoint an Advocate Commissioner directing him to measure the suit properties along with a qualified surveyor and file a report and plan drawn to scale.

On perusal of records, it is observed that the above suit has been filed by the petitioner to declare that the suit lane belongs to the petitioners and the respondents 1 to 4 in common, to demarcate boundaries and ascertain the length, breadth and width of the suit lane and mandate the respondent 1 to 5 to remove the encroachments made to the suit lane. The major dispute regarding the suit depends upon the measurement of the suit lane in order to ascertain as to whether encroachments have been made by either one of the parties. Therefore, it is seen that the measurement of the suit lane becomes necessary.

Thus, based on the foregoing discussions and in the interest of justice, this court is of the opinion that an Advocate Commissioner shall be appointed to measure the suit lane along with a qualified Surveyor.

Hence this Petition is ALLOWED. Advocate Mr. K.N. Natrajan is hereby appointed as the Advocate Commissioner and directed to inspect the suit lane after giving prior notice to both the parties and note down the physical features and measure the suit lane with the help of a qualified surveyor and file a report and plan drawn to scale. The remuneration is fixed at Rs.7,000/- which shall be directly paid to the Advocate Commissioner on or before 15.07.2025 failing which the petition shall stand automatically dismissed. The Commissioner warrant shall be issued on 16.07.2025 upon the payment of remuneration. Hence, for reporting compliance and issue of commissioner warrant call on 16.07.2025.

Dictated by me to the Steno-Typist and has been typed in the computer directly, corrected and pronounced by me in the open Court on 08th day of July 2025.

District Munsif,
Kumarapalayam.

PETITIONERS SIDE DOCUMENTS

Nil

RESPONDENTS SIDE DOCUMENTS

Nil

District Munsif,
Kumarapalayam.

Fair Orders
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