

**IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM,
THE NILGIRIS**

Present: **Thiru. L.PRAKASH, B.Sc., B.L.,**
DISTRICT MUNSIF, UDHAGAMANDALAM.

Tuesday, the 16th day of December 2025

I.A. No. 03 of 2025
in
O.S. No. 54 of 2025
(C.N.R. No. TNNS030 - 003093 - 2025)

N. Mohan

... Petitioner/Plaintiff

/VS/

1. Sathyaseelan
2. The Collector of Nilgiris, Ootacamund.
3. The Block Development Officer, Ootacamund.
4. The Special Officer,
Balacola Village Panchayat, The Nilgiris.

... Respondents/Defendants

This petition came on 25.11.2025 for final hearing before me in the presence of Mr. T.K. Devaraj, learned Counsel for the Petitioner and of Mr. K. Anandakrishnan, learned Counsel appearing for the Respondent No. 1 and the Respondents No. 2 to 4 remains exparte, upon hearing both sides and upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed Under Order XXVI Rule 9 of the Code of Civil Procedure, praying to appoint an Advocate Commissioner with the direction that he may engage the assistance of qualified surveyor to inspect the suit property and

submit a report that to find out and demark the extent encroached by the 1st defendant and to fix the boundaries of the plaintiff's extent of 2 1/2 cents of land then standing in R.S. No. 12/3 and latter assigned R.S. No. 12/3B and 1st defendant property then standing in R.S. No. 12/3 and latter assigned as R.S. No. 12/3C of the Balacola Revenue village-I as per the Parent and Title documents in correspondents with the FMB Sketch and to file his report along with the plan demark with the measurement and encroached portion separately measured marked by giving exact extent and to give present physical features of the suit property along with the photographs.

Gist of Petition and affidavit:

2. The petitioner is the plaintiff in the main suit filed for possession and mandatory injunction. He purchased an extent of 0.02½ acres (2½ cents) of vacant house site situated in Old Survey No. 2/1A and New R.S. No. 12/3 of Balacola-I Revenue Village under a registered sale deed dated 10.12.2014 in Doc. No. 1251/2014 and thereby became the absolute owner in peaceful possession and enjoyment. The said extent was subsequently subdivided and assigned R.S. No. 12/3B as per the proceedings of the Tahsildar, Kundah, dated 29.10.2015. After obtaining proper approval from the Balacola Village Panchayat, the petitioner constructed a residential house in the year 2015 and has been in possession of the property together with the building bearing Door No. 1/243. The petitioner alleges that the 1st defendant, without consent or permission, constructed a house on the southern side of the petitioner's house by encroaching an extent of 1 foot × 30 feet (30 sq. ft.) of land left by the petitioner on the southern side and put up construction without raising a separate wall on the northern side of the 1st defendant's house bearing Door No. 1/304.

3. It is further alleged that the 1st defendant raised an RCC roof over the petitioner's RCC roof on the first floor of the petitioner's house in violation of building rules and without consent. For proper identification and demarcation of the suit

property, accurate measurement, and to ascertain the exact extent of encroachment, the petitioner contends that local inspection is just and necessary. Hence, he prays for appointment of an Advocate Commissioner with the assistance of a qualified Surveyor to inspect the suit property, fix boundaries as per title deeds and FMB sketch, demarcate and measure the encroached portion, note physical features, take photographs, and submit a report with plan to enable the Court to pass an effective order. Hence prays to allow this petition.

Gist of Counter statement of 1st Respondent:

4. On the other hand, The 1st respondent opposes the petition as false, frivolous, vexatious and not maintainable in law and on facts. The entire allegations are denied. The petitioner is not the absolute owner of 2½ cents in Old S. No. 2/1A and New R.S. No. 12/3, nor is he in exclusive possession and enjoyment. The petitioner did not independently obtain plan approval or construct the house bearing Door No. 1/243. The petitioner and the 1st respondent belong to a Hindu undivided joint family with their father N. Nataraj as Kartha. For providing separate residence, the Kartha entered into a sale agreement dated 12.12.2013 for purchase of 5 cents of land in Old R.S. No. 2/1A and New R.S. No. 12/3 in the joint names of the petitioner and the 1st respondent, paying consideration entirely from joint family funds. Accordingly, sale deeds were executed on 10.12.2014 for 2½ cents each in the names of the petitioner and the 1st respondent.

5. The 1st respondent further alleges that, the construction of the residential building over the entire 5 cents was made out of joint family funds as a single engineering construction with uniform foundation, identical structure, common wall, same room size and same RCC roof level. Construction progressed in stages and was completed around December 2018. The petitioner occupies Door No. 1/243 and the

1st respondent occupies Door No. 1/304, both forming part of the same structure, with only a low partition wall on the first-floor RCC roof for identification. The properties and houses are joint family properties in which all members have equal right, title and interest, and neither party can claim exclusive ownership. The alleged subdivision assigning R.S. No. 12/3B in favour of the petitioner is denied as having been done without notice to the 1st respondent. The allegation of encroachment of 1 foot × 30 feet and raising RCC roof over the petitioner's house is denied as baseless, since no encroachment has occurred and both portions form part of a single joint family construction. Hence, the appointment of an Advocate Commissioner does not arise and the petition is liable to be dismissed. Without prejudice, if a Commissioner is appointed, assistance of a qualified Structural Engineer is sought to ascertain whether both portions constitute a single engineering construction. Hence prays to dismiss this petition with cost.

6. Respondents 2 to 4 have remained ex parte by not filing any counter statement.

Discussion:

7. Heard the learned counsel on either side and perused the records. The learned counsel for the petitioner submitted in his arguments that, the petitioner/plaintiff contends that he purchased an extent of 0.02½ acres (2½ cents) of vacant house site situated in Old Survey No. 2/1A and New R.S. No. 12/3 of Balacola-I Revenue Village under a registered sale deed dated 10.12.2014 in Doc. No. 1251/2014 and thereby became the absolute owner in peaceful possession and enjoyment of the same, the said extent was later subdivided and assigned R.S. No. 12/3B as per the proceedings of the Tahsildar, Kundah, dated 29.10.2015, after obtaining approval from the Balacola Village Panchayat, the petitioner constructed a

residential house in the year 2015 and has been in possession of the property together with the building bearing Door No. 1/243, the 1st defendant, without consent or permission, encroached upon an extent of 1 foot $\times$ 30 feet (30 sq. ft.) on the southern side of the petitioner's property, put up construction without a separate northern wall for his house bearing Door No. 1/304, and also raised an RCC roof over the petitioner's RCC roof on the first floor in violation of building rules, hence, the petitioner's counsel seeks appointment of an Advocate Commissioner with the assistance of a qualified Surveyor to identify and demarcate the suit property and the alleged encroachment.

8. On the other hand the learned counsel for the 1st respondent/1st defendant opposed the petition by contending that the petition is false, frivolous and not maintainable, it is denied that the petitioner is the absolute owner in exclusive possession of the suit property, the petitioner and the 1st respondent belong to a Hindu undivided joint family and the land measuring 5 cents in Old R.S. No. 2/1A and New R.S. No. 12/3 was purchased out of joint family funds in the names of the petitioner and the 1st respondent, each to an extent of 2½ cents, the construction over the entire extent of 5 cents is stated to be a single engineering construction made out of joint family funds with uniform structure, common wall and identical features, the alleged encroachment and illegal construction are denied in toto, the alleged subdivision assigning R.S. No. 12/3B in favour of the petitioner is disputed, hence, prayed for dismissal of the petition and alternatively sought for assistance of a qualified Structural Engineer if a Commissioner is appointed. The Respondents 2 to 4 remained ex parte.

9. Case records perused carefully, the suit is one for possession and mandatory injunction, wherein the core dispute revolves around the identity, extent and alleged encroachment in respect of the suit property. The petitioner alleges specific en-

croachment with measurements, whereas the 1st respondent disputes the same and sets up a case of joint family ownership and single engineering construction. In such circumstances, local inspection and measurement of the suit property with reference to title deeds and revenue records would assist this Court in effectively adjudicating the issues involved. The appointment of an Advocate Commissioner for such limited purpose would not amount to collection of evidence, but would only enable the Court to have a clear picture of the physical features and measurements of the properties.

10. Considering the nature of the dispute and the reliefs sought in the suit, this Court is of the view that appointment of an Advocate Commissioner with the assistance of a qualified Surveyor is just and necessary for effective adjudication of the issues involved. At the same time, having regard to the defence set up by the 1st respondent regarding single engineering construction, it is appropriate to permit the Advocate Commissioner to note the physical features of both portions of the building.

11. It is, however, made clear that the petitioner/plaintiff shall proceed with the main suit independently and without waiting for or bothering about the filing of the Advocate Commissioner's report in this petition, as the petitioner/plaintiff cannot rely upon the Advocate Commissioner's report to prove his case. It is further clarified that if the petitioner/plaintiff prolongs the proceedings of the main suit without commencing the trial, though the suit was ripe for trial on 24.10.2025 and is still pending without commencement of trial on account of the pendency of this petition, this petition shall stand closed automatically without granting any further time for filing the Advocate Commissioner's report.

12. With the above condition, this Court is inclined to allow this petition. Accordingly, ***Mrs. K.K. Jannathul Firdouse, M.A., LL.M.,*** Advocate, is appointed as

Advocate Commissioner to inspect the suit property and the adjoining property in possession of the 1st respondent with the assistance of a qualified Surveyor and a qualified Structural Engineer. The Advocate Commissioner shall measure and demarcate the suit property and the properties of the parties with reference to parent and title deeds, revenue records and FMB sketch, note the present physical features, identify and demarcate the alleged encroachment, if any, and file a report along with a plan showing measurements, boundaries and the encroached portion separately, if found, and also take photographs of the suit property.

13. Both parties shall be given due notice and opportunity to be present at the time of inspection and to render necessary assistance to the Advocate Commissioner. The remuneration of the Advocate Commissioner is fixed at **Rs. 15,000/- (Rupees Fifteen Thousand only)**, excluding the fee payable to the qualified Surveyor and the qualified Structural Engineer. The said remuneration shall be paid by the petitioner/plaintiff to the Advocate Commissioner within one week from the date of this order, and the Advocate Commissioner is directed to file the receipt for payment of his remuneration on the next hearing date.

14. The remuneration of the qualified Surveyor shall be paid by the petitioner/plaintiff in the first instance. The cost of engaging the qualified Structural Engineer shall be borne by the 1st respondent/1st defendant. Both parties are directed to extend their full cooperation to the Advocate Commissioner to enable him to carry out the inspection and file his report within the time stipulated by this Court. The Advocate Commissioner is also directed to take all necessary and earnest efforts to complete the inspection and to file his report along with the plan within the stipulated time.

RESULT

15. *In the result, this petition is allowed accordingly. No costs.*

This order is dictated to the steno - typist, typed by her in computer, corrected by me and pronounced by me in the open court on this 16th day of December 2025.

**District Munsif,
Udhagamandalam.**

Draft/Fair Order:

**I.A. No. 03/2025
in
O.S.No. 54/2025**

Date: **16.12.2025**

**District Munsif Court,
Udhagamandalam.**