

IN THE COURT OF THE DISTRICT MUNSIF OF UDHAGAMANDALAM

Present: **Thiru. L.PRAKASH., B.Sc., B.L.,**
District Munsif, Udhagamandalam

Thursday, the 23rd day of October 2025

I.A. No. 04 of 2025
in
I.A. No. 01 of 2022
in
O.S. No. 97 of 2016
(C.N.R. No. TNNS030 - 00304 - 2016)

J. Ravindran

... Petitioner/Petitioner/Plaintiff

/VS/

1. M.J. Subban

2. P. Suresh Babu

... Respondents/Respondents/Defendants

This petition came on 06.10.2025 before me for final hearing in the presence of Mr. Pon Ramachandran, Learned counsel for the petitioner/plaintiff and Mr. B.S. Siva Kumar, Learned Counsel for the respondents/defendants, upon considering case records carefully, this court passes the following

ORDER

1. This petition is filed under Section 151 of the Code of Civil Procedure, praying to re-open the I.A. No. 01/2022 filed under Order 26 Rule 9 of the Code of Civil Procedure, which was closed on 08.07.2025 and pass appropriate orders for availing commission report as deem fit in the circumstances of the above case.

Gist of Petition and affidavit:

2. The brief averment of petition is that, the petitioner/plaintiff has filed the above suit for permanent injunction against the respondents/defendants and during the pending proceedings, the respondents demolished the compound wall with grill gate and foot path and encroached an extent of 00.02 3/4 out of 00.06 acres and also putting up an illegal construction. Consequently, the petitioner filed an amendment petition for mandatory injunction as I.A. No. 1094/2016 which was allowed by this court. To prove the case, the petitioner filed a petition for appointment of a Court Commissioner as I.A. No. 01/2022 which was allowed on 22.12.2022 and the remuneration for the Court Commissioner was paid by the petitioner. The petitioner claims that the Court Commissioner failed to visit the property, and the court granted time as per the request of the advocate commissioner.

3. On 02.07.2025, the Court Commissioner was failed to appear, and a last chance was given to file the commissioner report by July 8, 2025, but the Commissioner again failed to appear on 08.07.2025. Despite the Court Commissioner being appointed on 22.12.2022, till date the Court Commissioner has not filed report and further till date the petitioner also not taken steps to execute the warrant by Court Commissioner and as such said I.A. was closed. Further, without the commission report, they cannot get justice or prove their case for a mandatory injunction and requests the court to order the commission report to be filed, as they should not be punished for the advocate commissioner's fault. During the above proceedings, a petition to amend the survey number in the plaint was filed and allowed by the court on 08.07.2025. Unless the court re-open the commission petition in I.A. No. 01/2022 which is closed on 08.07.2025 and pass necessary orders, would cause great hardship and irreparable loss. Hence, prays to allow this petition.

Gist of Counter Statement:

4. On the respondents' side, endorsement made to allow this petition cost. Hence, the respondents' had not filed any counter statement in this petition.

Points for consideration:

5. Heard the petitioner's side enquiry, petition, endorsement made by the respondent, case records perused carefully. It is to be decided in this petition that, whether this petition is liable to be allowed or not. This petition is filed under Section 151 of the Code of Civil Procedure, praying to reopen the petition filed under Order 26 Rule 9 CPC which was closed by this Court on 08.07.2025. The petitioner submits that in the petition under Order 26 Rule 9 CPC, this Court appointed an Advocate Commissioner on 22.12.2022 to inspect the suit property and file a report. However, the Advocate Commissioner did not visit the property and failed to file his report within the time granted by this Court. On 08.07.2025, the petition was closed on the ground that though the Advocate Commissioner was appointed long back, the report had not been filed and the petitioner had not taken any steps to execute the warrant.

6. The petitioner further, contends that without the report of the Advocate Commissioner, the plaintiff cannot effectively prove his case and would be put to great hardship. It is also contended that the petitioner should not be punished for the fault of the Advocate Commissioner who failed to discharge his duty. The respondent has endorsed to allow the petition on cost.

Discussion:

7. On perusal of records, it is seen that though the Advocate Commissioner was appointed on 22.12.2022 in I.A. No. 01 of 2022, the report was not filed till 08.07.2025. The petitioner also failed to take effective steps for execution of the

warrant during the said period. The suit is of the year 2016, and the trial has not yet commenced. While there has been delay in prosecution, this Court is mindful that the procedure is meant to advance justice, not to defeat it.

8. It is true that, the parties should not be made to suffer for the omission or laches of the Court-appointed Advocate Commissioner, but it is the duty of the petitioner and his counsel to proceed with the suit in time and take effective steps to execute the warrant. It is settled provision of law that, Code of Civil Procedure is designed to facilitate justice and further its ends, not to trip people up on technicalities. Further, procedure is the handmaid and not the mistress of justice, and it should not be allowed to thwart the cause of justice. Section 151 CPC empowers the Court to reopen a petition closed earlier, when the ends of justice so require. Further, while the inherent powers under Section 151 CPC are wide, they must be exercised in proper cases to prevent injustice, when reopening is necessary for fair adjudication. Further, when a commission under Order 26 Rule 9 CPC is not executed due to the inaction of the commissioner, the party should not suffer, and reopening is permissible under Section 151 CPC.

9. Further, the main suit is filed for the relief of declaration and mandatory injunction to remove the illegal construction in the suit property, when the dispute involves the physical features of the property and the commissioner failed to execute the warrant, the Court may allow reopening of the commission petition to avoid prejudice to the party.

10. In light of the above discussion and the endorsement made by the respondent, this Court is inclined to allow this petition, as the reopening would assist in the fair and complete adjudication of the dispute. However, considering the delay already caused, and to ensure that the proceedings are not further prolonged, suitable

conditions are to be imposed.

Result:

11. *In the result, this petition will be allowed on the following conditions*

- (a) that the petitioner shall pay a cost of Rs. 3000/- (Three Thousand Only) to the respondent on or before 28.10.2025.*
- (b) On such payment, the petition filed in I.A. No. 01 of 2022 under Order 26 Rule 9 CPC shall stand reopened, and the Advocate Commissioner already appointed shall execute the warrant and file his report within four weeks, without seeking further extension,*
- (c) further, the plaintiff shall commence the trial on the next hearing date, i.e. on 28.10.2025 without waiting for the Advocate Commissioner's report, as such report is only intended to assist the Court and cannot be treated as substantive evidence to prove the case.*
- (d) If the cost is not paid within the stipulated time, this petition shall stand dismissed automatically.*

12. *For compliance, call on 28.10.2025.*

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 the 23rd day of October 2025.

**District Munsif,
Udhagamandalam.**

Draft/Fair Order:
I.A. No. 04/2025
in
I.A. No. 01/2022
in
O.S.No. 97/2016

Date: **23.10.2025**

**District Munsif Court,
Udhagamandalam.**