

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF AT VELLORE

PRESENT: Thiru.K.Muthuraj, B.A.,B.L.,(Hon's),
Principal District Munsif,
Vellore.

Tuesday, the 3rd day of March 2026

I.A.No:-2/2025

In

O.S.No:- 97/2024

P.Shanmugam

..Petitioner/ Defendant

/ Versus /

Arulmozhi Sivanesan

..Respondent/ Plaintiff

This Petition came up on 17.02.2026 for final disposal in the presence of Thiru.T.S.Kannaiyan, the learned counsel for Petitioner and Thiru.G.Selvakumar, the learned counsel for Respondent. Upon hearing the both side enquiry and perusing the material records and having stood over for consideration till this date, this court passes the following:

ORDER

1.This petition has been filed by the petitioner/defendant under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, seeking appointment of an Advocate Commissioner to inspect the suit properties with the assistance of the District Surveyor, Vellore, and Revenue Officials, along with relevant revenue records, and to file a detailed report with photographs and a sketch in O.S. No.97 of 2024.

2. Brief Averments in the Petition:

The respondent/plaintiff has filed the suit in O.S.No.97 of 2025 against the petitioner/defendant seeking the relief of permanent injunction restraining the petitioner/defendant from trespassing into and interfering with the respondent/plaintiff's peaceful possession and enjoyment of the suit property. Originally, the plot measuring 30 feet in breadth was purchased by the respondent/plaintiff's husband, Sivanesan. Subsequently, he constructed an RCC roof building and executed a settlement deed in favour of the respondent/plaintiff. Out of the said 30 feet breadth, Sivanesan left 3 feet on the northern side and constructed the southern side wall of the house on the southern boundary line of the plot. The plot belonging to the petitioner/defendant lies on the southern side of the respondent/plaintiff's plot. On the common boundary between the two plots, Sivanesan had constructed the southern side wall of his house and had originally erected the outdoor unit of an air-conditioner on the front side of his house. Recently, the respondent/plaintiff is alleged to have shifted the outdoor unit of the air-conditioner to the southern side of the house, thereby encroaching upon the petitioner/defendant's plot. Further, three sunshades have allegedly been constructed by the respondent/plaintiff encroaching into the petitioner/defendant's property. According to the petitioner/defendant, no amount of oral evidence would sufficiently explain the said encroachments, and only through appointment of an

Advocate Commissioner, who can measure the property and note down the physical features including the alleged encroachments, can the truth be brought on record. Hence, the present petition has been filed.

3. Brief Averments of the counter:

The respondent/plaintiff has filed a counter contending that the petition is not maintainable either in law or on facts. The respondent/plaintiff does not admit any of the averments made in the petition except those specifically admitted herein. It is contended that the present petition has been filed only to misuse the machinery of the Court by appointing an Advocate Commissioner for the purpose of gathering evidence to prove the alleged encroachment. It is well settled law that an Advocate Commissioner cannot be appointed for the purpose of collecting evidence. The suit for injunction has been filed by the respondent/plaintiff based on long and peaceful possession and constructions made in the year 2002. The allegation of encroachment is stated to be false and imaginary. On the whole, the petition is devoid of merits and is liable to be dismissed with exemplary costs.

4. Heard both sides. The materials available on record were perused.

5. Point for Consideration:

Whether the petition is liable to be allowed or not?

6. Discussion and Findings:

The present petition has been filed by the petitioner/defendant under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to inspect the suit properties with the assistance of the District Surveyor and Revenue Officials, to measure the property, note down the physical features, and report the alleged encroachments. The suit in O.S.No.97 of 2025 is one for bare permanent injunction filed by the respondent/plaintiff, restraining the petitioner/defendant from interfering with her alleged peaceful possession and enjoyment of the suit property. It is settled law that in a suit for bare injunction, the primary issue for consideration is possession on the date of filing of the suit. Title or boundary disputes, unless directly and substantially in issue, need not be adjudicated in detail. The specific contention of the petitioner/defendant is that the respondent/plaintiff has encroached upon his property by shifting the outdoor unit of the air-conditioner to the southern side and by constructing three sunshades projecting into his property. According to the petitioner, such encroachments can be established only through measurement by a qualified surveyor with the assistance of revenue records, and hence appointment of an Advocate Commissioner is necessary. On the other hand, the respondent/plaintiff contends that the petition has been filed only to collect evidence in support of the defence and that an Advocate Commissioner cannot be appointed for the purpose of

gathering evidence. The respondent further contends that the constructions were made long ago and that the allegations of encroachment are false and imaginary. It is a well settled principle of law that the power under Order XXVI Rule 9 CPC is discretionary and is to be exercised when the Court considers a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute. However, such power cannot be invoked merely to enable a party to collect evidence in support of its case. The Court should not permit the machinery of appointment of an Advocate Commissioner to be used as a substitute for evidence which the party is bound to adduce. In the present case, the petitioner/defendant seeks measurement of the property with the assistance of the District Surveyor and Revenue Officials to establish the alleged encroachment. The alleged encroachment itself forms the basis of the defence to the suit for injunction. The burden lies on the petitioner/defendant to establish his defence by adducing appropriate oral and documentary evidence. If the petitioner is aggrieved by any alleged encroachment, it is open to him to work out his remedies in accordance with law in appropriate proceedings. Further, in a suit for bare injunction, unless the Court finds that identification of the property or physical features are seriously in dispute and cannot be resolved on the basis of evidence to be adduced by the parties, appointment of an Advocate Commissioner for measurement is ordinarily not warranted. In the present case, the petition does not disclose any ambiguity

regarding identification of the suit property. The petitioner's grievance relates to alleged encroachment and boundary dispute, which are matters to be established by evidence during trial. The appointment of an Advocate Commissioner at this stage would amount to assisting the petitioner in collecting evidence in support of his defence, which is impermissible. Therefore, this Court is of the considered view that the petitioner has not made out sufficient grounds for appointment of an Advocate Commissioner under Order XXVI Rule 9 CPC. Accordingly, the point for consideration is answered against the petitioner.

7. Result:

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

Directly dictated to the Steno-typist, typed by her in court system and corrected and the order was pronounced by me, in the open court, on this the 3rd day of March 2026.

**Principal District Munsif,
Vellore.**

List of witnesses and exhibits on both sides:- Nil

**Principal District Munsif,
Vellore.**