

In the Court of District Munsif, Mudukulathur

Present : Ms.J.C.Aparna, B.A, L.L.B.,

District Munsif,

Mudukulathur.

Thursday the 08th day of January 2026

I.A.No.05/2025

in

O.S.No.07/2021

B.Ramakrishnan

....Petitioner/ Plaintiff

/VS/

1. I.Ramu

2. Murugesan

....Respondents/Defendants

This petition came on 12.12.2025 before this court for a final hearing in the presence of Thiru.Y.T.Ansari, Learned Counsel for the Petitioner/Plaintiff, Thiru.S.Chandrasekaran, Learned Counsel for the 1st respondent/1st defendant, 2nd Respondent/ 2nd Defendant set exaparte and and upon hearing petitioner side enquiry and upon perusing the material records and having stood over till this day for consideration, this court delivered the following:

ORDER

This petition has been filed under Order 26 Rule 9 of Civil Procedure Code to appoint an advocate commissioner to inspect the suit properties with the help of surveyor and to file a report and plan.

2. The contention of the Petitioner/ Plaintiff in brief:-

The petitioner is the plaintiff in the main suit. The main suit is filed for the relief of permanent injunction. The suit properties are in the possession and enjoyment of the petitioner. Hence it is necessary to appoint a commissioner to inspect the suit properties with the help of surveyor and to file a report and plan so as to prove that the petitioner/plaintiff is in the possession of the suit properties or else the petitioner will be put to irreparable loss and hardships.

3. Brief averments of the 1st Respondent/ 1st Defendant in brief:

The 1st respondent/ 1st defendant denies the averments in the petition. The petitioner has no right or possession in the suit properties. There is no dispute as to the survey number, boundaries or extent in respect to the suit properties. It is settled law that a commissioner cannot be appointed to prove possession as it would amount to collection of evidence in a suit for bare Injunction. The petition is filed only to drag on the proceedings. Hence this petition is liable to be dismissed.

4. Point for consideration:-

Whether the petition be allowed and the relief be granted as prayed for?

Petitioner side enquiry heard. 2nd respondent/ 2nd defendant set exparte. The petition was reserved for orders by granting liberty for 1st respondent/ 1st defendant side enquiry on or before 07.01.2026 and available records were perused.

5. Answer to the Point:-

5.1. The case of the petitioner/plaintiff is that suit properties absolutely belong to him, and he is in the possession and enjoyment of the same till date and prays to appoint an advocate commissioner to prove that he is in the possession of the suit properties.

5.2. Whereas the 1st respondent/ 1st defendant contents that in a suit for bare injunction, where there is no dispute as to boundary, extent or identification, a commissioner cannot be appointed so as to collect evidence and the petition is liable to be dismissed.

5.3. Heard both sides, available records perused. On perusal of plaint and written statement, it can be seen that there is no dispute as to boundary, extent or identification of the suit properties. The petitioner/plaintiff claims that the suit properties are his self acquired properties and the 1st respondent/ 1st defendant claims that the suit properties are his ancestral properties. The sole reason stated by the petitioner/plaintiff for appointing a commissioner is that to prove that he is in the possession of the suit properties. Even though there is no bar in appointing a commissioner in a suit for bare Injunction, in the case on hand, there is no dispute as to the boundary, extent or identification of the suit properties. The burden is on the petitioner/plaintiff to prove that he is in the possession and enjoyment of the suit properties. It is well settled law that a commissioner cannot be appointed for the purpose of collecting evidence. In the case on hand, the burden of proof is on the petitioner/plaintiff to prove that he is in the possession

of the suit properties by way of oral and documentary evidence and appointing a commissioner to prove his possession will amount to collection of evidence. Hence in the light of the above discussions, this petition is dismissed and no order as to costs.

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

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 08th day of January 2026.

**District Munsif,
Mudukulathur.**

Both side witness and Documents: Nil

**District Munsif,
Mudukulathur.**