

In the Court of District Munsif, Mudukulathur

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

District Munsif,

Mudukulathur.

Monday the 05th day of January 2026

I.A.No.10/2025

in

O.S.No.10/2024

Josephrani

....Petitioner/ 2nd defendant

/VS/

1. Jeyaraj

..... 1st Respondent/Plaintiff

(Rep through his power agent
Aruljoseph Devid)

2. Manickam

....2nd Respondent/ 1st Defendant

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/ 2nd Defendant, Thiru.R.Balaji, Learned Counsel for the 1st respondent/Plaintiff, 2nd Respondent/ 1st Defendant set exaparte and and upon hearing both sides 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 note down the physical features of the suit property as per sale deed, revenue records and to file a report and plan with the help of Taluk Surveyor in the suit property.

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

The petitioner is the 2nd defendant of the main suit. The suit property was rightfully purchased by the petitioner and the 2nd respondent/ 1st defendant from Anthony Udayar by way of sale dated 02.01.2013 and the petitioner and 2nd respondent/ 1st defendant are in the lawful possession and enjoyment of the suit property till date. The petitioner and 2nd respondent/1st defendant have made fencing around the suit property and constructed a house in the northern portion of the suit property. Meanwhile the 1st respondent who have no right over the suit property have filed this suit to demolish the said house. Hence prays to appoint an advocate commissioner to note down the physical features of the suit property as per sale deed, revenue records and to file a report and plan with the help of Taluk Surveyor in the suit property in the interest of justice or else this petitioner will be put to irreparable loss and hardships.

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

The 1st respondent/plaintiff deny the averments in the petition. The sale deed dated 02.01.2013 is a forged one. The said Anthony Udayar on 14.10.2000 itself settled the suit property in favour of the 1st respondent. The 1st respondent has filed a suit in OS No.39/2023 in this court for the relief of declaration and recovery of possession. A commissioner cannot be appointed to prove possession. This petition is only filed 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 heard. On the side of petitioners Ex.P1 to P8 were marked. 2nd respondent/ 1st defendant set exparte. The petition was reserved for orders by granting liberty for 1st respondent/plaintiff side enquiry on or before 10.12.2025 and available records were perused.

5. Answer to the Point:-

5.1. The petitioner/ 2nd defendant has filed this present petition for appointing an advocate commissioner to inspect the suit property to identify the physical features of the suit property. On the other hand the respondent objects to the present petition by stating that there is only a title dispute a commissioner cannot be appointed to find out possession of the suit property.

5.2. Heard both side submissions. Records perused. On perusal of plaint and written statement it can be seen that the 1st respondent/plaintiff themselves state that the petitioner and 2nd respondent/1st defendant have encroached the suit property and has made construction in the north west portion of the suit property to an extent measuring 22 feet in east west and 32 feet in the south north direction. This suit is filed for the relief of recovery of possession and mandatory injunction. In a suit for mandatory injunction it is necessary to know the exact extent of the alledged encroachment if any to arrive at a proper conclusion and pass an effective decree. In the case on hand, it is admitted that by the 1st

respondent/plaintiff that the 2nd respondent/1st defendant has made encroachments on the northern side of the suit property and also considering that there is a relief of mandatory Injunction, the commissioner's report and plan would help the court in effective disposal of the suit.

5.3. Hence, in the light of the above discussions, this petition is allowed and this court appoints advocate S.Pooja J/o.K.Alagarsamy as commissioner. This court directs her to inspect the suit property, after giving notice to both parties, along with Taluk surveyor with the help of revenue records and to note down physical features and draw sketch and file report and plan. Total commissioner fee is fixed as Rs.6,000/-. In which the petitioner is directed to pay Rs.3,000/- at the time of inspection and remaining Rs.3,000/- to be paid at the time of filing report and plan by the advocate commissioner. For commissioner report and plan call on 05.02.2026.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 05th day of January 2026.

**District Munsif,
Mudukulathur.**

Petitioner side witness: Nil

Petitioner side documents:

Ex.P1	02.01.2013	Sale deed executed by Anthony Udayar infavour Josephrani and Manickam- Xerox copy
-------	------------	---

Ex.P2	-	10(1) Patta for S.No.360/6- Online copy
Ex.P3	-	House Tax Receipt for the year of 2022-2023-Original
Ex.P4	04.08.2023	EB Bill Receipt- Online copy
Ex.P5	07.10.2023	Encumbrance Certificate for the suit property-Online copy
Ex.P6	-	FMB for the suit property- Xerox copy
Ex.P7	18.08.2025	House Tax Receipt for the year of 2025-2026-Original
Ex.P8	09.10.2025	EB Bill Receipt- Online copy

Respondents side witness and documents: Nil

**District Munsif,
Mudukulathur.**