

In the Court of District Munsif, Mudukulathur

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

District Munsif,

Mudukulathur.

Wednesday the 4th day of June 2025

I.A.No.2/2025

in

O.S.No.20/2022

Mohammed Sahul Hameed

..... Petitioner/Defendant

/VS/

Vijaya

..... Respondent/Plaintiff

This petition came on 24.04.2025 before this court for a final hearing in the presence of Thiru.S.Sivagopal, Learned Counsel for the Petitioner/Defendant and Thiru.S.Periyasamy, Learned Counsel for the Respondent/Plaintiff and upon hearing both sides arguments 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 for the purpose of appointment of an advocate commissioner to note down the encroachment made by the plaintiff in the suit property which is a government Poramboke and the adjacent property which belongs to the petitioner/defendant.

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

The petitioner pleads that the respondent/plaintiff has encroached upon the suit property and also his property which is situated south of the suit property. He also states that in order to know how much the respondent/plaintiff

has encroached upon the suit property as well as on his property, it is necessary to appoint an advocate commissioner to measure the suit property along with the adjacent property. It is also stated that the plaintiff has already filed a commission application to measure the suit property and not pressed the said application because the commissioner's report would be a disadvantage to him. Hence prays to allow the petition.

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

The respondent/plaintiff pleads that she has indeed filed this suit for permanent Injunction as against the defendant but only in respect of the suit property comprised in S.No.124 and the property situated south of the suit property comprised in S.No.125/3B and S.No.125/3A2 is no way connected to this suit and she is in absolute possession and enjoyment of the adjacent property. It is also stated that an original suit in O.S.No. 36/2023 is pending before the Hon'ble Subordinate Court, Mudukulathur in respect of the said adjacent property as against the defendants. Hence states that the petitioner has solely filed this petition to collect evidence in a Bare Injunction suit and to prolong the proceedings in this suit. Hence there is no necessity to appoint an advocate commissioner.

4. Point for consideration:-

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

No documents filed on the side of the petitioner. On the side of the respondent, Ex.R1 marked. Heard both sides.

5. Answer to the Point:-

5.1. Both sides' counsels appearing for the respective parties have placed their submissions to substantiate their side. As per the petitioner, the

respondent/plaintiff is encroaching on the suit property and also his property (south to the suit property) which is not a subject matter of the suit. But the respondent/plaintiff himself admits that the suit property which is a government poramboke does not belong to him and he is running a business with the permission of the government. On perusal of the records, it is seen that the suit property is a government poramboke comprised in S.No.124 which is not denied by either of the parties. In respect of the other property the petitioner prays to measure the property situated in S.No.125/3B and 125/3A2 (south of the suit property). The said property is not a subject matter of the suit property and praying to appoint an advocate commissioner to also measure encroachment of the property which is no way connected to the suit is not maintainable. There is clearly a dispute going on between the parties as to the title regarding the same and by the Ex.R1 marked by the respondent, it is seen that suit has been pending regarding the dispute in Hon'ble Subordinate Court, Mudukulathur. Hence it is clear that the respondent/plaintiff has already admitted to the suit property as government poramboke, the question of encroachment or whether the plaintiff is in the possession of the suit property with the permission of the government can be only ascertained in the trial by letting in evidence. The law is well settled that appointment of an advocate commissioner in a suit for injunction simpliciter will lead to collection of evidence when there is no boundary dispute or dispute regarding the identification of the property. Whether he is encroaching or not can be only decided by letting in evidence during the trial and also a commissioner cannot be appointed for the purpose of measuring a property that is not part of the suit. The primary purpose of a court commissioner is to assist in elucidating matters in dispute during a legal proceeding, and they cannot be used to collect evidence or ascertain possession of a property. Therefore, in light of the above discussions, this petition is dismissed.

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 4th day of June 2025.

**District Munsif,
Mudukulathur.**

Petitioner side witnesses and documents: Nil

Respondent side witnesses : Nil

Respondents side documents :

Ex.R1 - Copy of plaint in O.S.No.36/2023 in the file of Hon'ble Subordinate Court, Mudukulathur

**District Munsif,
Mudukulathur.**

