

In the Court of District Munsif, Mudukulathur

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

District Munsif,

Mudukulathur.

Monday the 14th day of July 2025

I.A.No.28/2021

in

O.S.No.10/2017

Sundaravelu

..... Petitioner/Defendant

/VS/

Shanmugavalli

..... Respondent/Plaintiff

This petition came on 30.06.2025 before this court for a final hearing in the presence of Thiru.K.Velusamy, Learned Counsel for the Petitioner/Defendant and Thiru.S.Chandrasekaran, 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 under Order 26 Rule 10(3) of Civil Procedure Code to scrap the commissioner's report and plan in I.A.No.194/2019 and also to appoint another commissioner to measure the suit property.

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

The petitioner is the defendant in the main suit. The petitioner prays to scrap the report and plan filed by the commissioner as it shows that the petitioner/defendant has encroached for an extent of $\frac{3}{4}$ square feet upon the suit property mentioned as ABCD in S.No.117/1C2 in the report and plan which is false. Also the commissioner has not mentioned on what basis the measurement

of the suit property was measured. Hence this petition to scrap the present report and to appoint another commissioner to measure the suit property.

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

The respondent/plaintiff denies the averments in the petition. The suit property was measured by a qualified Taluk Surveyor in the presence of VAO and the parties to the suit. The four boundaries are identified and a proper report has been filed. It is well settled law that in suits for declaration and permanent injunction only a commissioner report and plan is filed, it is utterly unnecessary to appoint a second commissioner. There has been no proper reason cited by the petitioner to scrap the commissioner report. This petition is filed belatedly to drag on the proceedings. Hence prays to dismiss the petition.

4. Point for consideration:-

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

No documents filed on either side. Heard both sides.

5. Answer to the Point:-

5.1. This petition is filed to scrap the report and plan filed by the commissioner and to appoint a new advocate commissioner to properly measure the suit property. The only reason stated by the petition to appoint a new advocate commissioner is that the advocate commissioner has not mentioned in the report that by which means the commissioner fixed the suit property while measuring it. On perusal of the commissioner report it is seen that the commissioner has stated in her report that the suit property was measured on the basis of the FMB in the presence of the parties to the suit and with the help of the VAO and the Land Surveyor. The present suit is filed by the respondent/plaintiff to declare the suit property in S.No.117/1C2 as belonging to the respondent/plaintiff and a permanent injunction against the defendant as he

is trying to encroach on the suit property. Whereas the defendant states that the plaintiff has filed the suit in S.No.117/1C2 but is trying to encroach on his property situated in in S.No. 117/1C1.

5.2. In these circumstances, it is well settled dictum of the Hon'ble Apex Court that the plaintiff must prove his case on the basis of the oral and documentary evidence and that he cannot take the loop holes in the case of the defendant and seek for remedy. In the instant case, it is the duty of the plaintiff to prove his case and the defendant need not prove his case. In such circumstances, this court is of the view that the respondent is not entitled to file series of application of reissuing the warrant until a favorable report is filed or to scrap the previous report of the commissioner for the reasons stated in the petition and to appoint a new Advocate Commissioner. In the 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 14th day of July 2025.

**District Munsif,
Mudukulathur.**

Both sides witnesses and documents : Nil

Court documents:

Ex.C1- Commissioner's report

Ex.C2- Commissioner's plan

**District Munsif,
Mudukulathur.**

