

**In the Court of District Munsif, Mudukulathur**

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

**District Munsif,**

**Mudukulathur.**

**Monday the 2<sup>nd</sup> day of June 2025**

**I.A.No.1/2025**

**in**

**O.S.No.62/2017**

Madurappa

..... Petitioner/Plaintiff

/VS/

1. Vimala

2. The District Collector,  
Ramanathapuram.

3. The Tahsildar.  
Mudukulathur

..... Respondents/Defendants

This petition came on 23.04.2025 before this court for a final hearing in the presence of Thiru.M.Maheswaran, Learned Counsel for the Petitioner/Plaintiff and Thiru.M.Dharmar, Learned Counsel for the Respondents/Defendants 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 appointing an advocate commissioner and directing him to inspect the suit property with the assistance of GPS and surveyor and to demarcate and take down the physical features of the suit schedule properties and to file a report of the same before this court.

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

The petitioner/Plaintiff states that the petitioner is the plaintiff in the main

suit, which has been filed for the relief for Declaration, Recovery of Possession and mandatory Injunction to restrain the defendants and their men from interfering with the plaintiff's peaceful possession over suit property. It is further submitted that the respondent/1<sup>st</sup> defendant has encroached item No.2, the common pathway which comes around four feet and the item No.1 of the suit property which is a canal which is the essential irrigation for the agricultural lands and had constructed a compound wall encroaching the same. Hence appointing an advocate commissioner to elucidate the materials regarding the portions encroached by demarcating the petition mentioned property and to note down the physical feature becomes necessary. It is also stated that by way of I.A.No.437/2017, an advocate commissioner was already appointed in this suit, but the commissioner has submitted in his report that due to the presence of houses, the G-line could not be measured and he was unable to file the plan. Hence the petitioner prays to allow this petition to measure the suit properties by help of GPS stating that he is ready to bear the costs. Hence the petition.

### **3. Brief averments of the Respondent/1<sup>st</sup> Defendant in brief:**

The respondents/defendants opposed this application and states that, the respondents/defendants didn't encroach any portion of land as alleged by the petitioner/plaintiff. It is stated that the petitioner had already approached the Hon'ble High Court and by virtue of the order, the surveyor had already submitted a report stating that there is no encroachment in respect of S.No.298/3 and another application has been made by the petitioner to the concerned authorities. Further it is also stated that the commissioner while surveying the suit properties it is found that there was no encroachment whatsoever by the respondents and states that the petition is only filed to drag on the proceedings hence prays to dismiss this petition.

### **4. Point for consideration:-**

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

On the side of the petitioner, Ex.P1 and Ex.P2 marked. No documents filed on the side of the respondents. Heard both sides.

**5. Answer to the Point:-**

5.1. Heard the rival contentions put forth by both sides' counsels, perused the materials placed before this court, it is evident that this present suit has been filed for the relief of declaring the suit properties as common pathway and canal, for recovery and mandatory Injunction against the defendants. However, perusal of the records available before this court establishes the fact that there is a dispute with respect to the boundaries, and both parties raise allegations against each other to the effect that the one party has encroached into the common pathway and the other party denies that there is no such common pathway or any encroachment. Also on perusal of the report filed by the commissioner in I.A.No.437/2017 in the suit, it is evident that he was unable to survey the suit properties because the G-line measurements were unable to procure due to the presence of a house on the said G-line and also the objections placed by the 1<sup>st</sup> defendant, the commissioner was unable to file the plan due to the above said reasons.

5.2. After careful consideration of facts and circumstances of this case, this court is of the view that, a local investigation to be requisite for the purpose of elucidating the matter in dispute because the recitals of the documents may not reveal the true facts and measuring of land on the spot by an Advocate Commissioner along with a Surveyor with the help of GPS may become necessary to take down the physical feature and demarcate the entire suit schedule properties in the petition given that the previous commissioner was unable to file a plan before this court because of the incorrect G-line measurements. Also considering the fact that the petitioner is willing and ready to bear the expenses for surveying the land with the help of the DGPS device

which is evident to this court through Ex.P1 which shows the permission obtained for the use of DGPS Device, this court is inclined to allow this petition in the interest of justice.

5.3. Advocate Mrs.S.Pooja, is appointed as an advocate commissioner to inspect and note down the physical features and to measure and demarcate the suit properties with the help of surveyors and DGPS device. Rs.6,000/- is fixed as a remuneration to the advocate commissioner. The petitioner has to bear the remuneration which is directed to be paid in two parts, part payment of Rs.3,000/- to be directly paid to the advocate commissioner at the time of her inspection by the petitioner and remaining Rs.3,000/- has to be paid to the advocate commissioner at the time of complete submission of his report and plan before this court and also the costs for the procurement of the DGPS device. The commissioner has the power to issue the notice to seek the help of surveyors through the respective Taluk Tahsildar of the suit property. The commissioner is hereby directed to inspect the suit property after giving notice to both sides, further it is directed to consider the memo of instructions if any to be given by the parties, each party should be given a chance of presenting their case, which needs to be in conformity with the principles of natural justice. The advocate commissioner has to file the report and plan without any unnecessary delay. For report and plan call on 30.07.2025.

Directly typed by me in my official laptop and formatted by Steno Typist, corrected and pronounced by me in open court on this 2<sup>nd</sup> day of June 2025.

**District Munsif,  
Mudukulathur.**

**Petitioner side witnesses : Nil**

**Petitioner side documents :**

Ex.P1 - Order issued by the District Survey Office, Ramanathapuram  
dated 18.07.2024.

Ex.P2 - Order in W.P.(MD)No.29537/2023 dated 13.12.2023

**Respondents side witnesses and documents : Nil**

**District Munsif,  
Mudukulathur.**

