

**IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE
RANIPET, RANIPET DISTRICT.**

**Present: Thiru.A.BALAKRISHNAN, B.B.A., L.L.B.,
I Additional District Judge,
Ranipet.**

Tuesday, this the 5th day of August 2025

I.A.No.03/2022

in

O.S.No.23/2021

1. Lakshmi

2. Srilekha

..... Petitioners/Plaintiffs.

-Vs-

1. Saravanan

2. Sakunthala

.....Respondents/Defendants.

This petition is coming before me for final hearing on 19.07.2025 in the presence of Thiru.A.G.Selvaraaj, Advocate for the Petitioners/plaintiffs and Thiru.K.Solmuthu Azhagan, Advocate for 1st respondent/1st defendant, the suit against the 2nd respondent/2nd defendant is dismissed and upon hearing the arguments of petitioners' side and on perusal of all connected material records and having stood over for consideration till this date, this court passed the following

ORDER

The petitioners/plaintiffs have filed the application U/o 26 Rule 9 of CPC., seeking an order to appoint the Advocate Commissioner to make local inspection, to demarcate the petition mentioned property and also common path way of plaintiffs and defendants 1 & 2 and to note down the physical features of the suit property with the help of Taluk surveyor.

1. The 1st plaintiff has filed an affidavit for herself and on behalf of the 2nd plaintiff in support of the application stating that the suit property was allotted to

them as per the compromise decree dated 19.02.2013 passed in A.S.No.1086/2007 on the file of Hon'ble High Court of Madras and they have been in possession and enjoyment of the property since the date of the said decree; the plaintiffs enjoying the common way with the other sharers and while being so the plaintiffs had to be at the parental house of the 1st plaintiff at Chittoor owing to certain circumstances and at that time the 1st defendant was in gratuitous possession and enjoyment of the suit property on behalf of the plaintiffs; the plaintiffs recently learnt that the 1st defendant with an intention to grab the property is trying to create sham and nominal transaction over the suit property and hence the plaintiffs demanded the 1st defendant to deliver the possession of the suit property, but the 1st defendant declined to deliver the possession of the property falsely claiming title over the suit property; the 1st defendant illegally blocking the common way thereby preventing the plaintiffs from enjoying the suit property and hence the above suit is filed; it is necessary to appoint an Advocate Commissioner to make local inspection.

2. The 1st respondent who remained exparty in the suit has filed a counter contending that in a suit for declaration of title, the question of appointment of Commissioner does not arise and the petitioners have filed the application to fish out information and create evidence for other suits pending before the Sub Court Ranipet.

Point for determination is :-

Whether the application filed by the petitioners/plaintiffs for appointment of Advocate Commissioner is deserved to be allowed?

Point :-

a) On perusal of records, it is seen that the plaintiffs on the strength of compromise decree dated 19.02.2013 passed in A.S.No.1086/2007 on the file of Hon'ble High Court of Madras have filed the above suit as against the defendants seeking the reliefs of declaration of title, recovery of possession and also for permanent injunction restraining the defendants from alienating the suit property.

b) The 1st defendant did not file written statement and hence he was set exparte. The 2nd defendant died pending the suit and in view of memo filed on the side of the plaintiffs on 19.03.2025 that the 2nd defendant is only a formal party no relief claimed against the 2nd defendant, the suit has been dismissed as against the 2nd defendant.

c) It is to be noted that the plaintiffs have averred in the plaint that ever since from the date of compromise decree in A.S.No.1086 of 2007 they were in possession and enjoyment of the suit property as absolute owners of the suit property. The plaintiffs have alleged that the defendants had no right, title or interest in respect of the suit property and the 1st defendant was only in gratuitous possession on behalf of the plaintiffs. The plaintiffs have furnished the specific Town S.No. with old S.No. and also the extent of measurements of the property in the plaint schedule. The plaintiffs have nowhere stated either in the plaint or in the affidavit that there is any dispute between the parties in respect of identification of the suit property or any dispute in respect of extent of the suit property. When the plaintiffs filed the suit for the relief of declaration of title, recovery of possession and for permanent injunction for the property which has specific measurement and specific survey numbers, there is no need for inspection of the suit property by the Advocate Commissioner for the purpose of demarcation. The plaintiffs have not given any valid reason in the affidavit as to why the Advocate Commissioner to be appointed.

d) It is a settled law that in a suit for declaration of title, or in a suit for permanent injunction the help of Advocate Commissioner cannot be sought by the parties to the suit indirectly for collection of evidence that too when there is no dispute in respect of measurement or identification of the suit property. In the above circumstances, this court is of the view that the application has no merit and is liable to be dismissed. This point is answered accordingly.

In the result, the application is dismissed. There shall be no order as to cost.

Dictated by me to the Steno-typist and transcribed by her in the computer, corrected and pronounced by me in the open court, on this the 5th day of August 2025.

I Additional District Judge,
Ranipet.