

**DMC ARAKKONAM 1 IA.No.01 of 2024 IN OS.02/2023
IN THE COURT OF DISTRICT MUNSIF ARAKKONAM RANIPET DISTRICT**

PRESENT:- Selvi.A.AMEENA.,BBA.,LLB(Hons)

DISTRICT MUNSIF, ARAKKONAM

Thursday the 27th day of November 2025

IA.No.01 of 2024

IN

OS.No. 02 of 2023

(CNR - TNRP080002432022)

1. S.Sivasankaran

2. S.Mogandass

---Petitioners/Plaintiffs

(vs)

1. K.Arumugam

---Respondent/Defendant

This petition is coming for final hearing before me on 17.11.2025 in the presence of Mr.R.Saravanan counsel appearing for Petitioners/plaintiffs and Mr.K.U.Sale Murugan counsel appearing for respondent/defendant. On perusal of entire case records having stood over for consideration till this day, this court has delivered the following:-

ORDER

The petition is filed for Under Order 26 Rule 9 of CPC to appoint an Advocate commissioner in the above case to inspect and measure schedule mentioned properties.

1.Brief Averments of petition:

1.1. The petitioner states that the herein and the 1st defendant in the above suit. He states that the plaintiff filed the above suit for permanent injunction and for other reliefs. Petitioner father namely Sanjeevi Mudaliar had purchased S.F.No.76/12 an

extent of 0.99 cents to one Annamalai Mudaliar under Regd. Sale deed 03.07.1985 is mentioned as A-schedule mentioned property. Out of remaining 0.89 cents petitioner father had conveyed 0.85 cents to different 3rd parties on various dates. Petitioner father died on 17.11.1985 leaving behind me as his sole legal heir. The remaining 0.4 cents i.e. B-schedule property is in my peaceful possession and enjoyment without any interference from anybody.

1.2. The petitioner states that in order to grab that 0.4 cents the plaintiff had falsely filed this suit with false and vexatious allegations. It is just and necessary to inspect and measure schedule mentioned properties by the advocate commissioner along with Taluk Surveyor and file detailed report with plan otherwise petitioner will be put to irreparable loss and hardships which compensated by other means. Prayed to appoint an Advocate Commissioner in the above case to inspect and measure schedule mentioned properties.

2.Brief Averments of Counter:

2.1. The petitioner denied the statement that there are no A schedule and B schedule properties in the plaint. Without any specific pleadings and any specific counterclaim the petitioner cannot subdivide as A schedule and B schedule property. And also denied that 1st defendant's father and the defendants enjoyed the remaining 0.4 cents i.e. B schedule mentioned property is in their peaceful possession and enjoyment without any interference from anybody. The plaintiff only has proper title to the suit property by purchasing the same from the father of the 1st defendant. The vendor of the petitioner handed over the possession to the Respondents at the time of the registration.

2.2. These boundaries are not clearly stated and it is an imaginary boundaries in order to grab the land which is sold to the respondent. The possession cannot be proved by way of advocate commissioner report. The respondent further states that the petitioner has to prove their case independently by letting oral and documentary evidence not gathering evidence or collecting the material evidence under the guise

of an Advocate commissioner report. This petition with a malafide intention to drag on the case. Prayed to dismiss the above petition.

3.Points for consideration:

Whether this petition is to be allowed or not?

On the side of petitioner no oral evidence was examined. Ex.P1 to Ex.P9 marked. On the side of respondent no oral evidence was examined and no exhibits were marked.

4.Discussion and findings:

4.1. Heard both sides. Perused the records. The case of the petitioner is that the plaintiff filed the above suit for permanent injunction and for other reliefs. Petitioner father namely Sanjeevi Mudaliar had purchased S.F.No.76/12 an extent of 0.99 cents to one Annamalai Mudaliar under Regd. Sale deed 03.07.1985 is mentioned as A-schedule mentioned property. Out of remaining 0.89 cents petitioner father had conveyed 0.85 cents to different 3rd parties on various dates. Petitioner father died on 17.11.1985 leaving behind me as his sole legal heir. The remaining 0.4 cents i.e. B-schedule property is in petitioner's peaceful possession and enjoyment. In order to grab that 0.4 cents the plaintiff had falsely filed this suit with false and vexatious allegations. It is just and necessary to inspect and measure schedule mentioned properties by the advocate commissioner.

4.2. Whereas the contention of the there are no A schedule and B schedule properties in the plaint. Without any specific pleadings and any specific counterclaim the petitioner cannot subdivide as A schedule and B schedule property. And also denied that 1st defendant's father and the defendants enjoyed the remaining 0.4 cents i.e. B schedule mentioned property is in their peaceful possession and enjoyment .The vendor of the petitioner handed over the possession to the Respondents at the time of the registration. The possession cannot be proved by way of advocate commissioner report. The petitioner has to prove their case independently by letting oral and documentary evidence not gathering evidence or collecting the material evidence

under the guise of an Advocate commissioner report. Prayed to dismiss the above petition.

4.3. Upon hearing both rival submission this court is of opinion that Ex.P1 is the Regd sale deed executed by Annamalai Mudaliar & others in favour of 1st defendant father Sanjeevi mudaliar. Ex.P2 is the Regd sale deed executed by Sanjeevi Mudaliyar. Ex.P3 is the Regd sale deed executed by Sanjeevi mudali in favour of the Pandurangan. Ex.P4 is the Regd sale deed executed by 1st defendant father Sanjeevi mudali in favour velli ponnu. Ex.P5 is the Regd sale deed executed by 1st defendant father sanjeevi mudali in favour of vijayan. Ex.P6 is the Regd sale deed executed by vellai ponnu in favour of plaintiff mother chandra. Ex.P7 is the Regd settlement executed by 1st defendant in favour of 2nd defendant. Ex.P8 is the Regd sale deed executed by Sanjeevi mudali in favour of the Venkatesan. Ex.P9 is the Regd sale deed executed by Sanjeevi mudali infavour of the sulochana.

4.4. It is pertinent to note that the Petitioner / Plaintiff has filed the above suit for bare injunction as not to disturb his peaceful possession and enjoyment of the suit properties. The defendant/petitioner contended that he is in possession of the suit schedule property. When that is the case, the petitioner/defendant should prove that as on the date of suit, he has been in possession and enjoyment of the suit properties by letting in evidence. While so, the Petitioner / Defendant cannot attempt to prove his possession of the suit properties by the Advocate Commissioner's report and plan. Further, the Petitioner / Defendant cannot seek to appoint the Advocate Commissioner for collection of evidence.

4.5. In a suit for bare injunction, when there is no any dispute in identification of the properties, measurements of the properties, or boundary dispute, or no allegation of attempt by the other side to alter the physical features is made, the Advocate Commissioner cannot be appointed on mere asking.

4.6. Further, the prayer in this petition is for appointment of an Advocate Commissioner to measure the suit property and note down the physical features.

When it is the contention of the Petitioner / Defendant that he is in possession and enjoyment of the petition mentioned properties, the purpose of filing this petition is nothing but an attempt to collect evidence through the Advocate Commissioner's report and plan and to prove his possession. It is settled position of law that, the Advocate Commissioner cannot be appointed for collection of evidence and to prove the possession.

4.7. In a judgment reported in *2020 (1) CTC 182, S. Anand & Others Versus A. Jeyabalan & Others*, the Hon'ble Madurai Bench of the Madras High Court has clearly held as follows;

11. It is clear from the above Judgment that power to appoint a Commissioner for local investigation cannot be exercised by the Court to assist the party to collect evidence. It is also clear from the above Judgment that in a suit for permanent injunction, if the report of the Advocate Commissioner, would indirectly amount to finding out the possession of the property, such a commission should never be appointed.

12. This Court is aware of the fact that even in a suit for bare injunction, an Advocate Commissioner can be appointed. It is not a complete bar for a Court to appoint an Advocate Commissioner in a suit for bare injunction. However, such an appointment must be only in cases where it is necessary for localising the property, when there is a dispute regarding boundaries or there is an attempt made to alter the physical features of the property etc. In a suit for bare injunction, the Courts are normally reluctant to appoint a Commissioner for noting down the physical feature of the property, since in most of the cases, it will amount to collecting evidence in favour of one of the parties.”

4.8. From reading dictum of the above judgment, it is clear that in the suit for bare injunction, petition was filed for appointment of Advocate Commissioner to note down the physical features is an attempt only for collection of evidence and that cannot be done through the Advocate Commissioner.

4.9. In the present suit, possession of the suit properties as on the date of the suit alone is relevant factor. The present existing physical features of the suit properties will no way help the Petitioner / Defendant. Further, by way of alleged attempt of trespass, criminal acts indirectly, the Petitioner / Defendant wants to collect evidence through the Advocate Commissioner, which cannot be done as has been held by the Hon'ble Madras High Court in the judgment cited supra and in various other similar judgments. Therefore, viewing in all angles, the prayer of the Petitioner / Defendant for appointment of an Advocate Commissioner in this case for the purposes stated in the petition are nothing but an attempt for collection of evidence and prove possession, which is not permissible in law. Therefore, this petition deserves to be dismissed as devoid of merits.

4.10. IN THE RESULT, the petition filed by the Petitioner /Defendant for appointment of an Advocate Commissioner is dismissed as devoid of merits. There shall be no orders as to the costs.

Dictated to typist directly, typed in his computer, corrected and pronounced by me in the Open Court on this the 27th day of the November 2025.

District Munsif,
Arakkonam.

Petitioner side witnesses and Exhibits:- NIL

Petitioner side Exhibits:-

Ex.P1	03.03.1981	Regd sale deed executed by Annamalai Mudaliar & others in favour of 1 st defendant father Sanjeevi mudaliar.
Ex.P2	27.06.1985	Regd sale deed executed by Sanjeevi Mudaliyar
Ex.P3	28.06.1985	Regd sale deed executed by Sanjeevi mudali in favour of the Pandurangan
Ex.P4	03.07.1985	Regd sale deed executed by 1 st defendant father Sanjeevi

		mudali in favour velli ponnu.
Ex.P5	03.07.1985	Regd sale deed executed by 1 st defendant father sanjeevi mudali in favour of vijayan.
Ex.P6	05.05.1986	Regd sale deed executed by vellai ponnu in favour of plaintiff mother chandra.
Ex.P7	24.12.2018	Regd settlement executed by 1 st defendant in favour of 2 nd defendant.
Ex.P8	27.06.1985	Regd sale deed executed by Sanjeevi mudali in favour of the Venkatesan.
Ex.P9	27.06.1985	Regd sale deed executed by Sanjeevi mudali infavour of the sulochana.

Respondent side witnesses and Exhibits:- NIL

District Munsif,
Arakkonam.