

IN THE COURT OF THE DISTRICT MUNSIF, SANKARI

Present: Tmt. R. ELAMATHI, B.A., B.L.,
District Munsif, Sankari

Thursday, the 04th day of June, 2026

திருவள்ளூர்வராண்டு 2057 பராபவ, வருடம், வைகாசி திங்கள் 21-ம் நாள் வியாழக்கிழமை

R.E.A. 01/2025 in R.E.P.No.02/2025

Siddhuraj

... Petitioner/ Plaintiff /D.Hr.

//Versus//

1. Lakshmi
2. Chinnal
3. Jothi
4. Arumugam
5. Selvam
6. Siddhan
7. Govindan
8. Perumal
9. Siddhuraj
10. Shanmugam

... Respondents/Defendants /J.Ds.

This petition came up for final hearing before me in the presence of Thiru. A.Kailassanathan Advocate for Petitioner and Respondents were remained exparte and upon Perusing both side pleadings and records and having stood over till this day for consideration and this court passed the following:

ORDER

This Execution Application has been filed by the Petitioner/Plaintiff/Decree Holder under Order XXVI Rule 9 of CPC,1908 seeking for an appointment of an Advocate Commissioner to measure the suit property with the assistance of a qualified surveyor in the presence of Village Administrative Officer, Edanganasalai Bit-1 Village and to fix the boundary stones in the suit property.

2) The Gist of the Petition:-

2.1) The Petitioner submits that he is the Decree Holder in the above Execution Petition and plaintiff in the main suit.

2.2.) The Petitioner submits that he is aware of the facts and circumstances of the case. He had filed the above suit seeking the relief of permanent injunction against the Respondents/Judgment Debtors, restraining them from interfering with his peaceful possession and enjoyment of the suit schedule properties. The Court passed decree in Petitioner's / Decree holder / Plaintiff's favour and granted a permanent injunction vide judgment dated 13.03.2023.

2.3) The Petitioner submits that despite being fully aware of the permanent injunction order passed by this Court, the Respondents/Judgment Debtors, with deliberate disregard for the Court's order and with malicious intent to disturb the petitioner's peaceful enjoyment of the suit properties, trespassed into the said properties on 01.06.2023 and wilfully uprooted and removed the boundary stones demarcating the suit properties. When the petitioner brought the Court's injunction order to the notice of the Respondents, they responded with threats, stating- " கோர்ட்டு டிகிரி வாங்கினால் எங்களை மீறி காட்டை ஓட்டி வருவாயா முடிந்தால் அளந்து எல்லை கற்கள் நட்டு காடு ஓட்டு பார்க்கலாம்" என மிரட்டி நான் தாவா சொத்துக்களை உழவடை செய்யவிடாமல் தடுத்து விட்டனர். petition para 3 pg no.1 last 3 lines The Respondents thus threatened the petitioner and obstructed him from cultivating the suit properties.

2.4) The Petitioner submits that he has filed an application before the Sangakiri Taluk Office on 05.06.2023 requesting for surveying and demarcating the suit properties and paid a fee of Rs. 800/- for the same. However, on account of the Respondents financial influence, political connections, and the apparent complicity of certain revenue department officials, the survey and demarcation proceedings have been continuously delayed. The Respondents are presently raising objections to the survey, compelling the

petitioner to seek directions from this Court for an order of survey. The petitioner further submits that he also lodged a police complaint regarding the Respondents' unlawful acts, however, the police took no effective action, stating that it was a civil matter and advising the petitioner to obtain a Court order and then fix the boundary stones. Despite the Court's decree, the Respondents continue to prevented the petitioner from cultivating the suit properties, aided by political influence.

2.5) The Petitioner submits that on account of the illegal and contumacious actions of the Respondents/Judgment Debtors, he is unable to peacefully cultivate or enjoy the benefits of the permanent injunction decree. The Respondents' conduct is wholly unsustainable in law and equity. Accordingly, he has filed this Execution Petition seeking the arrest of the Respondents/Judgment Debtors on a warrant of arrest and their commitment to Civil Prison for a period of two months, for the offence of wilfully and contemptuously uprooting the boundary stones of the suit properties and obstructing him from cultivating and enjoying the suit schedule properties in terms of the permanent injunction decree. At the time of filing the original suit, the suit schedule properties were measured and demarcated through a Court Commissioner by a qualified surveyor, and the Commissioner's Report and Plan were duly submitted before this Court. The Petitioner submits that the said Commissioner's Report and plan to be taken on record and treated as part of this petition. Since the Respondents have wilfully uprooted and removed the boundary stones and disobeyed the Court's decree, it has become necessary for this Court to appoint an Advocate Commissioner and to measure the suit property with the assistance of qualified and licensed surveyor, and to direct the fixing of boundary stones. In the absence of such directions, the petitioner will be rendered incapable of peacefully enjoying the suit properties or giving effect to the Court's decree, resulting in grave hardship, loss, and irreparable injury to him.

3) On 15.07.2025, Respondents 1,3,6,7,8,9,10 were set exparte due to their non appearance. On 15.09.2025, Respondents 2, 4 and 5 were set exparte due to their non appearance.

4) Points for Consideration :

Whether the Petitioner/Plaintiff/Decree Holder is entitled for the relief as prayed for?

5) No oral and documentary evidences were adduced on both sides.

6) Heard, the petitioner side learned counsel. Records perused. This Execution Application has been filed by the Petitioner/Plaintiff/Decree Holder under Order XXVI Rule 9 of CPC,1908 seeking for an appointment of an Advocate Commissioner to measure the suit property with the assistance of a qualified surveyor in the presence of Village Administrative Officer, Edanganasalai Bit-1 Village and to fix the boundary stones in the suit property. The case of the petitioner in brief as, the petitioner has obtained a permanent injunction decree dated 13.03.2023 in O.S.No.77/2019 restraining the Judgment Debtors from interfering with the suit schedule properties. In wilful violation of the decree, the Judgment Debtors trespassed into the suit properties on 01.06.2023, uprooted and removed the boundary stones, and obstructed the Decree Holder from cultivating the properties. An application for survey was filed before the Tahsildar, Sangakiri on 05.06.2023 with a fee of Rs.800/-, but was stalled due to the Judgment Debtors' interference. Police complaint also yielded no result. Since the boundary stones have been wilfully removed, appointment of a Court Commissioner for measuring, demarcating, and fixing of boundary stones is necessary to enforce the decree. Hence, the petition. The power of the Court to appoint a Commissioner is governed by Order XXVI Rule 9 of the Code of Civil Procedure, 1908, which provides that a Court may issue a commission to such person as it thinks fit, to make a local investigation for the purpose of elucidating any matter in dispute, ascertaining the extent

or condition of any property, or for any other just purpose. In execution proceedings, which invests the Executing Court with all necessary and incidental powers to give complete and effective relief under the decree. It is a well-established principle of law that the primary duty of the Executing Court is to place the Decree Holder in the position that the decree contemplates and to ensure that the Decree Holder enjoys the fruits of the decree. In the present case, the permanent injunction decree dated 13.03.2023 conclusively establishes the Decree Holder's right to peaceful possession and enjoyment of the suit schedule properties. The decree has attained finality and is binding upon the Judgment Debtors. The uncontroverted averments in the affidavit reveal that the Judgment Debtors have wilfully removed the boundary stones from the suit properties after the passing of the decree. Such an act is not merely a trespass, it is a deliberate and calculated attempt to obliterate the physical identity and limits of the decretal properties so as to render the decree unenforceable. It is material to note that during the suit proceedings, this Court had already appointed a Commissioner, and a Commissioner's Report and Plan were duly filed and form part of this Court record and on perusal of records it is seen that steps has been taken by the petitioner by making an application for survey before the Tahsildar, Sangakiri on 05.06.2023 with a fee of Rs. 800/-. This court is of considered opinion as, Decree Holder has placed before this Court a clear, unimpeachable, and undisputed prima facie case. The decree is in his favour. The Judgment Debtors have defiance of the decree, removed the boundary stones. The averments stand wholly un rebutted. The balance of convenience overwhelmingly and indisputably favours the Decree Holder. The appointment of a Commissioner will cause no prejudice or hardship whatsoever to the Judgment Debtors, since the exercise is strictly confined to surveying and demarcating the properties already covered by the decree and does not affect or curtail any right of the Judgment Debtors beyond the decree. On the other hand, if the present application is refused, the Decree Holder will be rendered completely incapable of giving practical effect to the permanent injunction decree. He will be unable to identify the precise boundaries of the decretal properties,

unable to prevent the Judgment Debtors from continuing to encroach upon the same, and unable to cultivate and enjoy the properties to which he is legally entitled. The hardship to the Decree Holder in the event of refusal is thus grave, irreparable, and continuing in nature. Based upon the discussions made above, this court is of considered opinion as, the balance of convenience therefore clearly infavour of the petitioner/deGREE holder. Further this Court is of the firm, considered, and unequivocal opinion that the appointment of an Advocate Commissioner for measuring, demarcating and fixing of boundary stones in respect of the suit schedule properties is necessary in the interest of justice.

7) In the result, this Execution Application is allowed. Accordingly Advocate. Thiru. S. Elumalai (M/S No.213/1993) has been appointed as an Advocate Commissioner. The Commissioner is directed to measure the suit property with the assistance of qualified surveyor along with Village Administrative Officer, Edanganasalai, Bit-1 Village and to fix the boundary stones in respect of the suit schedule properties and to file the report and plan. The remuneration of an Advocate Commissioner has been fixed as Rs. 10,000/- which is to be directly paid by the petitioner to the Advocate commissioner. For report and plan. Call on 04.07.2026.

**District Munsif,
Sankari.**

Encl:

Petitioner side Witnesses & Exhibits:- NIL

Respondents side Witnesses & Exhibits:- NIL

**District Munsif,
Sankari.**