

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, ATTUR

PRESENT : **Tmt. D. JANSIRANI, MBA., LL.M.,**
ADDITIONAL DISTRICT MUNSIF, ATTUR.

Monday, 30th day of March 2026

I.A. No. 3/2023 in O.S. No. 150/2023

CNR No. TNSA13-000215-2023

Palani . . . Petitioner/Plaintiff

/Versus/

Sudhakar . . . Respondent/Defendant

This petition is came up for final hearing before me on 10.03.2026 in the presence of Thiru.K.Chandrasekaran Advocate for the Petitioner/Plaintiff and, Thiru.M.Chinnadurai Advocate for the Respondent/defendant, upon hearing the enquiry on either side, and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following,

ORDER

The Petitioner/Plaintiff has filed this petition under Order.26 Rule 9 CPC praying to appointment of a commissioner, to measure the suit property with aid of qualified surveyor and to file the report and plan.

2. Brief averments made in the petition :

The petitioner/plaintiff filed the suit against the respondent for the relief of Permanent injunction. The suit property is dwelling house. The suit property

situated Thammampatty Village, Gangavalli Taluk, Salem District. On 26.09.1993 the plaintiff got the suit property and defendant's property by way of Natham patta issued by special Thashildar Natham scheme, Gangavalli. The total extent of Natham property is 1076 1/2 square feet. On 08.09.2003 the plaintiff sold the property to the extent of 697½ square feet out of 1076-1/2 square feet to defendant through registered sale deed on the file of Thammampatty Sub registrar office under the document No. 927/2003. The remaining property in the Natham patta No. 785 is suit property to the extent of 379 square feet. The plaintiff is in possession and enjoyment of the suit property. The revenue records like Natham patta and house Tax receipt all are stands in the name of the plaintiff. Except the plaintiff no one is having any right, title or interest over the suit property.

The plaintiff states that the defendant is possession and enjoyment of western portion of Natham Survey No. 470/26. The defendant after purchased the property he has not taken any steps to measure the purchased property. On the other hand, the defendant giving so many disturbances to the plaintiff's peaceful possession and enjoyment in the suit property by stating that the plaintiff has encroached some portion of defendant's property. The plaintiff stated that he would ready to measure the suit property with help of qualified surveyor. The defendant was not agreed to measure his property and the plaintiff's property. The plaintiff has taken many steps to measure the property, but all are ended without result. Since the defendant objected the surveyor to measure of the property. The defendant is not having any right or interest over the suit property.

The petitioner stated that the key dispute between himself and the respondent is boundary line between suit property and respondent's property. He had taken so many steps to measure the suit property in order to fix the boundary line. The respondent objected to measure the suit property and

respondent property without any valid reason. The appointment of commissioner to measure the suit property is essential to solve the dispute. Unless this Hon'ble court to appoint the commissioner for the purpose of measure the suit property he will be put to great loss and hardship. Hence, this Petition.

2. **Brief averments made in the counter :**

The respondent has denied the material averments put forth in the petition, except those specifically admitted. The respondent has admitted the facts stated in paragraph No.3 of the plaint, but has categorically denied the allegations contained in paragraphs 4 and 5. It is the specific case of the respondent that he had lawfully purchased the house and house site from the plaintiff and his legal heirs in Survey No.470/26 and, after such purchase, he had measured the property and constructed a brick wall at his own cost demarcating the respective portions. According to him, the upper portion of the wall belongs to the defendant, while the lower portion corresponds to the plaintiff's property, and both parties have been enjoying their respective portions accordingly.

The respondent further contends that both properties have access through a south-facing doorway, but the plaintiff has been consistently causing obstruction to the defendant in using the said access. It is stated that despite several attempts, including police complaints and efforts to measure the property, the plaintiff has either refused cooperation or interfered with the process. It is also the contention of the respondent that while the plaintiff is residing in the suit property, the defendant, who resides in Chennai for business purposes, had kept his house locked, during which time the plaintiff allegedly caused damage to the property by breaking tiles, dumping waste, demolishing portions of the structure, and obstructing the entrance. Due to such acts, the

defendant was constrained to let out the property to a tenant for its protection, but even then, the plaintiff is said to have caused nuisance and disturbance to the tenant.

The respondent has further stated that he has no objection to the plaintiff enjoying his own property, provided there is no interference with the property purchased by the defendant. It is averred that a legal notice dated 27.05.2022 was issued calling upon the plaintiff to desist from encroachment and obstruction, to which the plaintiff sent a reply containing false and untenable claims, particularly denying the defendant's right of access through the southern side, contrary to the recitals in the sale deed.

The respondent has also alleged that the plaintiff has been preventing subdivision and proper demarcation of the properties, though attempts were made by the defendant for the same. It is further contended that the plaintiff's property continues to remain in joint ownership and that the plaintiff is acting inconsistently with his own pleadings and earlier statements. The existence of access on three sides, including a panchayat road, and the entitlement of the defendant to use the southern entrance are also asserted.

In essence, the respondent contends that the plaintiff is deliberately creating obstruction and inconvenience with an ulterior motive to compel the defendant to relinquish the property. The respondent asserts that there has been no interference on his part with the plaintiff's possession and that the entire claim of the plaintiff is false, unsustainable, and devoid of merit. Therefore, the respondent has prayed for dismissal of the petition.

3. Now the point for consideration is Whether the petitioner/Plaintiff is entitled to get the relief prayed in the petition?

4. Both side argument heard. The petition, counter and records are carefully perused. The plaintiff filed this suit against respondent/defendant for relief of permanent injunction. This petition has been filed by the petitioner/plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to measure the suit property with the assistance of a qualified surveyor and to file a report along with a plan.

The case of the petitioner, as set out in the affidavit, is that the suit has been filed for the relief of permanent injunction in respect of the suit property situated in Thammampatty Village, Gangavalli Taluk, Salem District. According to the petitioner, the total extent of the original Natham property is 1076½ sq.ft., out of which 697½ sq.ft. was sold to the respondent/defendant under a registered sale deed dated 08.09.2003, and the remaining 379 sq.ft. constitutes the suit property, which is in the possession and enjoyment of the petitioner. It is further contended that the dispute between the parties relates to the boundary between the petitioner's property and the respondent's property, and that despite several attempts, the property could not be measured due to the obstruction caused by the respondent. Hence, the petitioner seeks appointment of a Commissioner for proper measurement and demarcation of the boundary.

The respondent/defendant denies the allegations made by the petitioner and contends that the petition is not maintainable. It is stated that the petitioner is put to strict proof of all averments in the plaint except those specifically admitted. According to the respondent, the property in Survey No.470/26 had already been measured earlier with the assistance of a surveyor, and a boundary wall has been constructed separating the respective portions of the petitioner and the respondent.

The respondent further submits that it is the petitioner who is causing obstruction and interference in the peaceful enjoyment of the respondent's

property, including blocking access, damaging the structure, and creating nuisance to the tenant. It is also contended that the petitioner has been refusing to cooperate for proper measurement and is attempting to reopen settled issues under the guise of this petition. The respondent asserts that there is no necessity for appointment of an Advocate Commissioner, as the boundary has already been identified and demarcated. Hence, the petition is liable to be dismissed.

It is a settled principle of law that an Advocate Commissioner can be appointed under Order XXVI Rule 9 CPC for the purpose of local investigation, particularly in cases involving identification of property, fixation of boundaries, or measurement of disputed lands. In the present case, the core dispute between the parties admittedly revolves around the boundary line separating the respective properties of the petitioner and the respondent. The pleadings of both sides clearly disclose that there is a serious dispute regarding encroachment and demarcation of the respective extents.

Though the respondent contends that measurement has already been done and a wall has been constructed, such disputed questions cannot be conclusively decided without proper local investigation. Appointment of a Commissioner in such circumstances would assist the Court in effectively adjudicating the issue and would not cause any prejudice to either party. On the contrary, it would enable the Court to arrive at a just and proper conclusion based on factual measurements and ground realities.

In the present case, considering the nature of the dispute and the necessity to identify and demarcate the suit property with reference to records, this Court is of the view that appointment of an Advocate Commissioner is just and proper.

Accordingly, this petition is allowed.

Hereby Miss.R.Suganya, M/S.5852/2023 is here by appointed as Advocate Commissioner. She is directed to measure the suit property with the aid of qualified surveyor after issuing proper notice to both parties and counsels. She is entitled for Rs.12,000/- as remuneration for the same. The petitioner is directed to deposit the remuneration in court account. To file report and plan. Call on 15.06.2026.

This Order is dictated to the Steno typist directly, typed by her, corrected and pronounced by me in the open court on this the 30th day of March 2026.

**Additional District Munsif
Attur**

List of Documents and Witnesses on Both side:

Nil.

**Additional District Munsif
Attur**

A.D.M. Court, Attur.

DRAFT / FAIR ORDER

I.A. No. 3/2023 in O.S. No. 150/2023

Dated : 30.03.2026