

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Monday, this the 10th day of August 2026

I.A.No. 01 of 2025

in

O.S. No. 75 of 2025

(CNR No. TNSA17-000084-2025)

1. Ayyanthurai
2. Kathalingam
3. Murugan
4. Marimuthu

...Petitioners/Plaintiffs

-Vs-

1. Venkatachalam
2. Ayyappan
3. Murugan
4. Sundari
5. Senthil
6. Jayavel
7. Rathinavel

...Respondents/Defendants

This petition is heard in the presence of Mr. A. Sureshbabu., B.A., B.L., the Learned counsel for the Petitioners/Plaintiffs and Thiru. A.M.C.Periyasamy., B.Sc., B.L., the Learned counsel for the Respondents 2 and 3/Defendants 2 and 3 and Mr. V. Vaithiyalingam., B.A., B.L., the Learned counsel for the Respondents 1, 4 to 7/Defendants 1, 4 to 7. Enquiry heard, written arguments perused and having stood over for my consideration till this day, this court delivered the following,

ORDER

Petition filed Under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate Commissioner for the purpose to inspect the suit properties, which is a pathway and cart track being used by the petitioners/plaintiffs and to file a detailed report and plan.

1. Brief averments in the petition filed by the petitioners/plaintiffs is as follows:

1.1. The petitioners are the plaintiffs in the original suit, which was filed for the relief of declaration and permanent injunction as against the respondents/defendants. The suit cart track comprised in Survey no. 562/5B and 562/9A were being used by the petitioners/plaintiffs and the 40 families around therein for the past 9 successive generations and the father of the respondents 2 and 3/defendants 2 and 3 had also filed a suit in O.S.No. 643 of 1990 on the file of this court as against the fathers of the petitioners/plaintiffs, in which a judgment and decree was passed on 24.10.2000 by holding that the defendants therein in the suit and the villagers are entitled to use the suit cart track. The appeal preferred by the father of the respondents 2 and 3/defendants 2 and 3 in A.S.No. 22 of 2022 on the file of Hon'ble Sub Court, Mettur was also dismissed.

1.2. But the respondents/defendants were now claiming independent right over the suit cart track and on 18.04.2025, they along with their henchmen had restrained the usage of the suit cart track by the petitioners/plaintiffs and the 40 families therein. Hence, this petition is filed by the petitioners/plaintiffs to appoint an Advocate Commissioner for the purpose to inspect the suit properties, which is a pathway and cart track being used by the petitioners/plaintiffs and to file a detailed report and plan in order to establish the same before this court.

2. Brief facts in the counter statement filed by the 2nd respondent and adopted by the 3rd respondent is as follows:

2.1. These respondents had specifically denied the averments put forth in the petition averments. The petitioners are not entitled to claim any right over the property of these respondent in Survey no. 562/5B of Mallikuntham Village. In the said property, there exist two residential house bearing door no's. 11/143 and 11/37/1. These respondents are residing in the said house. The petitioners had suppressed the same and had filed the suit alleging that there exist a cart track. In

fact to reach the property in Survey no. 562/8, there exist a pathway in Survey no. 564/2 through the Survey no. 562/9A. It is false to state that there exist a cart track, which was comprised in Survey no. 562/5B and 562/9A. It is false to state that the petitioners/plaintiffs and 40 families therein are using the said cart track. Hence, this petition is liable to be dismissed.

3. Brief facts in the written statement filed by the respondents 1, 4 to 7, which was adopted as counter in this petition is as follows:

3.1. These respondents had specifically denied the averments put forth by the petitioners/plaintiffs. The petitioners had not specifically averred in which property they were claiming the pathway. The suit property in O.S.No. 643 of 1990 is no way connected with the suit property herein. The 1st respondent had purchased the property in Survey no. 562/9 to an extent of 47 cents from his vendors by paying valuable consideration vide a registered sale deed in document no. 1672/2005. Then he sold 11 cents of land to the 4th respondent and 7 cents of land to One Karupuchetti on 19.05.2010. The remaining 29 cents with specific four boundaries was in possession of the 1st respondent. The revenue records were also mutated in his name.

3.2. These respondents are no way connected with the suit in O.S.No. 643 of 1990 and A.S.No. 22 of 2002. These respondents are not parties in the said proceedings and hence, the judgment and decree passed therein would not bind these respondents. The petitioners had not at all shown four boundaries for the suit property. The description of the suit property is also wrong. The petitioners had insisted these respondents to sell their lands for a low price. Since, it was refused, they had come forward with this false suit. Hence, this petition is also liable to be dismissed.

4. No oral and documentary evidence on the either side.

5. Points for Consideration:

(i) Whether an advocate commissioner has to be appointed in this petition for the purpose sought for ?

6. Both side rival submissions heard with regard to the respective pleadings and perused the materials on record. The original suit is filed by the petitioners/plaintiffs for the relief of declaration, to declare that as per the judgment passed in O.S.No. 649 of 1990 on the file of this court and A.S.No. 22 of 2002 on the file of the Hon'ble Sub Court, Mettur, the petitioners/plaintiffs and 40 families therein are entitled to use the suit pathway and cart track and for the consequential relief of permanent injunction to restrain the defendants and their men from causing any disturbance in using the said suit cart track.

7. It is the case of the petitioners/plaintiffs as per the plaint pleadings that the suit cart track comprised in Survey no. 562/5B and 562/9A were being used by the plaintiffs and the 40 families around therein for the past 9 successive generations and the father of the respondents 2 and 3/defendants 2 and 3 had also filed a suit in O.S.No. 643 of 1990 on the file of this court as against the fathers of the plaintiffs, in which a judgment and decree was passed on 24.10.2000 by holding that the defendants therein in the suit and the villagers are entitled to use the suit cart track. The appeal preferred by the father of the respondents 2 and 3/defendants 2 and 3 in A.S.No. 22 of 2022 on the file of Hon'ble Sub Court, Mettur was also dismissed. But the respondents/defendants were now claiming independent right over the suit cart track and on 18.04.2025, they along with their henchmen had restrained the usage of the suit cart track by the petitioners/plaintiffs and the 40 families therein. Hence, this suit.

8. The respondents/defendants had specifically disputed the existence of the suit cart track and contended that there exist only two residential house bearing

door no's. 11/143 and 11/37/1 in the suit survey numbers and the respondents 2 and 3 were residing therein and there exist a pathway in Survey no. 564/2 through the Survey no. 562/9A to reach the property in Survey no. 562/8.

9. The suit property herein is described in the plaint schedule as the cart track to an extent of east-west 106 feet, south-north 44 feet in length and 22 feet in breadth jointly runs in Survey no. 562/5B and Survey no. 562/9A of Mallikundam Village. In the plaint schedule, it was further averred that the said cart track was being used by the petitioners/plaintiffs and 40 families therein. The said words of 40 families through out the plaint pleadings and in the plaint schedule is ordered to be deleted as per the order passed in I.A.No. 10 of 2026 dated 10.08.2026.

10. On perusal of the either side pleadings, it shows that the respondents are specifically disputing the existence of the alleged plaint schedule cart track, in which the relief is claimed by the petitioners/plaintiffs. Such being the position, the questions to be decided in the suit is whether there exist a cart track as alleged by the petitioners and whether the same was obstructed by the respondents or not?. To decide the same, in the considered opinion of this court the appointment of the Advocate Commissioner is very much necessary in order to find out the existence of the cart track and whether any block or obstruction being made in the alleged cart track and what is the nature of the cart track and the measurement of the cart track, which are all could be decided only by appointing an Advocate Commissioner.

11. In the case of **M. Indirani vs P. Narayanan in CRP. No. 533 of 2025 of Our Hon'ble Madras High Court**, where the dispute is with regard to the existence of the cart track, Our Hon'ble Madras High Court had directed an advocate commissioner to note down the existence of the cart track and to file his report. As per the facts and circumstances of the present case on hand and the pleadings of either side, this court would also forms opinion that the appointment of advocate commissioner is very materials to decide the case on hand. Further, the report of the

advocate commissioner would also certainly be helpful for the proper adjudication and fair determination of the suit proceedings. Therefore, from the overhaul discussion and in the interest of justice, this court is inclined to allow this petition.

In the result, this petition is allowed. Advocate Mr. A.K. Kalaimamani., B.L., is appointed as an advocate commissioner in this petition.

(i) He is directed to inspect and measure the suit property along with the help of Village Administrative Officer and Qualified Surveyor and note down whether the suit cart track exist or not and file a detailed report with sketches.

(ii) The advocate commissioner is directed to give notice to both parties before inspection.

(iii) His remuneration is fixed as Rs.10,000/- and the same has to be paid directly to the advocate commissioner. For commissioner report and plan call on 01.09.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 10th day of August 2026.

**District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**District Munsif,
Mettur.**