

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICTPresent: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Wednesday, this the 24th day of September 2025**I.A.No. 05 of 2025****in****O.S. No. 17 of 2022**

(CNR No. TNSA17-000025-2022)

1. Perumayee

2. Subramani

3. Palanisamy

4. Settu

... Petitioners/Plaintiffs

/versus/

1. Sithaiyan

2. Madhesh

... Respondents/Defendants

This petition came up before me for final disposal in the presence of the learned counsel Mr. K. Kokilavani., M.A., B.L., appearing for Petitioners/Plaintiffs and the learned counsel Mr. P. Gopinathan., B.Sc., B.L., appearing for Respondents/Defendants. Upon hearing both sides submissions and after stood over for my consideration till this day, this court passed 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 and measure the suit properties by it's four boundaries along with the help of Village Administrative Officer and Surveyor and to file his report.

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

1.1. The petitioners are the plaintiffs in the original suit. The 1st petitioner is the mother of the other petitioners. The 1st petitioner had purchased the suit

properties from the 1st and 2nd respondent vide a sale deed dated 20.02.2006 to an extent of 19-1/2 cents and was being in possession of the same. Thereafter, she had orally partitioned the suit properties in favour of the petitioners 2 to 4 and handed over the possession to them. Now the 1st petitioner is residing in the house situated in the suit property belongs to the 4th petitioner. Since, the patta is jointly issued with the name of the respondents and the 1st petitioner, they had applied for a separate patta in their favour. When the surveyor had visited the property, the respondents had restrained them and they had insisted the petitioners to execute a deed in respect of one cent of land in their favour and also started to disturb their possession in the suit property.

1.2. In the mean while, the respondent's brother namely One Velu had filed a suit in O.S.No. 49 of 2022 on the file of this court for the relief of partition including the suit property herein and also sought for a relief to declare the sale deed executed in favour of the 1st petitioner as null and void. In the said suit, the said Velu had deposed that the respondents herein had only sold a portion of 16 cents to the 1st petitioner and hence, he had also sought for the relief only in respect of the same. But the respondent had sold the suit property with an extent of 19-1/2 cents with specific boundaries. Hence, this petition is filed to appoint an advocate commissioner.

2. Brief facts in the counter filed by the 1st respondent and adopted by the 2nd respondent is as follows:

2.1. The respondents denied the averments made by the petitioners in their petition. The alleged sale deed is only a sham and nominal and no transfer of ownership or possession was effected under the said deed. This petition is filed alleging that the extent of property sold out to the 1st petitioner is wrongly claiming as 16 cents, that too in an other suit. In this suit, the relief of permanent injunction alone has been sought for. Such being the position, the petitioners right and

possession in the suit property has to be established. Since, there is no evidence for the same, this petition is filed only to create a evidence in this nature. This petition is filed by the petitioners, when the case was posted for further evidence on the side fo the petitioners. Hence, this petition is not maintainable and liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Submissions:

(i) The learned counsel for the petitioners had submitted that in the connected suit in O.S.No. 49 of 2022, which was filed by the respondents brother named Velu seeking the relief of partition and to declare the sale deed executed in favour of the 1st petitioner as null and void, the witness therein had deposed that the property sold out to the 1st petitioner is only to an extent of 16 cents. But actually, in the sale deed executed by the respondents the extent was mentioned as 19-1/2 cents. Further, the respondents is also claiming to sell one cent of land in the portion sold out to the 1st petitioner. Hence, in order to clarify and establish the actual portion sold out to the 1st petitioner, the suit properties should be inspected and measured by an advocate commissioner with regard to the boundaries described therein.

(ii) Per Contra, the learned counsel for the respondents had submitted that the suit herein is filed only for the relief of permanent injunction and alleged deposition is also not in this present suit and hence, the said reason is not acceptable to appoint an advocate commissioner in this present suit. Moreover, the alleged sale deed is only a sham and nominal document and no right or possession is transferred through the same.

5. Points for Consideration:

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

6. Discussion:

6.1. Both side rival submissions heard and perused the pleadings and materials on record. The original suit is filed by the petitioners/plaintiffs for the relief of permanent injunction restraining the respondents/defendants from in anyway interfering or disturbing the petitioners possession in the suit property. It is the contention of the petitioners that the suit property is purchased by the 1st petitioner vide a sale deed dated 20.06.2006 from the respondents. The respondents had admitted the said execution, but however disputed in their written statement that the same was executed only for the loan purpose and no right or possession is transferred through the same. The purpose of the execution of the said sale deed can only be decided in the main suit after considering the oral and documentary evidence, let in by either side. Hence, the issue is hereby left open to be decided in the main suit proceedings.

6.2. The said sale deed is marked as Ex.A1 in the main suit proceedings. On perusal of the same, it shows that the respondents herein along with their minor sons had sold an portion to an extent of 18-1/2 cents in Survey no. 307/16C and 1 cent in Survey no. 307/16B, which is the suit property herein. It is the further contention of the petitioners that in the connected suit in O.S.No. 49 of 2022, which was filed by the respondents brother named Velu seeking the relief of partition and to declare the sale deed executed in favour of the 1st petitioner as null and void, the witness therein had deposed that the property sold out to the 1st petitioner is only to an extent of 16 cents. Further, the respondents are also claiming to sell one cent of land in the portion sold out to the 1st petitioner.

6.3. Though the respondents disputed that the above said sale deed, they had not specifically disputed the description of the suit property with any necessary implications in their written statement as held in Order 8 Rule 5 of CPC. The real dispute between the parties is with regard to the purpose for which the said sale

deed is being executed and not the extent or measurements therein. The claim of the one cent of land in the suit property is also denied by the respondents. In this case, already PW1 to PW4 were examined on the side of the petitioners and they had also cross examined on the side of the respondents. Admittedly, the suit is filed only for the relief of permanent injunction to restrain the respondents/defendants from in anyway interfering or disturbing the petitioners possession in the suit property. Such being the position, it is for the petitioners to establish their lawful possession and the alleged interference caused by the respondent through oral and documentary evidence. The alleged deposition by a witness made in the connected suit with regard to the extent would no way be relevant in this present suit, since it was not specifically disputed by the respondents in their pleadings by way of written statement filed in this suit and whereas, it is not the pertinent issue to be decided herein. Therefore, this court forms opinion that considering the nature of the suit and the questions to be decided, it is not required to appoint an advocate commissioner in this present suit for the reasons adduced in the affidavit filed by the petitioners. Hence, in the interest of justice, this court is inclined to dismiss this petition.

In the result, this petition is dismissed. Considering the facts and circumstance of this case, there is no order as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 24th day of September 2025.

**District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**District Munsif,
Mettur.**