

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

District Munsif, Mettur

Monday, this the 27th day of April 2026**I.A.No. 05 of 2025****in****I.A.No. 02 of 2022****in****O.S. No. 102 of 2021**

(CNR. No. TNSA17-000125-2021)

Chinnaraji

... Petitioner/Respondent/Defendants

/Versus/

1. Kunjappan

2. Kengireddy

3. Jeyam

... Respondents/Petitioners/Plaintiffs

This petition came up before me for final disposal in the presence of Mr. N.Senthilkumar., B.A., B.L., the learned counsel for the petitioner/respondent/defendant and Mr. P. Gopinathan., B.Sc., B.L., the learned counsel for the respondents/petitioners/plaintiffs. Enquiry heard and having stood over for my consideration till this day, this court passed the following:-

ORDER

This petition is filed by the petitioner/respondent/defendant to scrap the commissioner report and plan filed in I.A.No. 02 of 2022.

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

1.1. The petitioner herein is the respondent in the commission petition in I.A.No. 02 of 2022 and defendant in the original suit, which was filed by the respondents for the relief of permanent injunction, declaration and mandatory injunction. The petitioner is having property in Survey no. 164/2B of Thinnappatty Village to an extent of 2.72.00 hectares in patta no. 870 and he was being in

possession and enjoyment of the same. The respondents are having their property in Survey no. 164/2A to an extent of 2.50.50 alone in patta no. 869 and beyond that extent, they have no right or title over the property of the petitioner.

1.2. In I.A.No. 02 of 2022, an commissioner was appointed and he visited the suit property and had filed his report and plan. The petitioner had also filed a suit in O.S.No. 110 of 2020 before this court for the relief of permanent injunction regarding his property and the same is also pending. In such circumstances, on perusal of the FMB sketch of the property of the petitioner in Survey no. 164/2B in order to obtain agricultural loan, he found that the extent of the property was wrongly shown as 2.70.00 hectares instead of 2.72.00 hectares. Like wise, the FMB of the property of the respondents in Survey no. 164/2A was wrongly shown as 2.52.50 hectares instead of 2.50.50 hectares i.e) the extent of the 2 ares of the property of the petitioner was wrongly included with the property of the respondents.

1.3. Knowing the mistakes in the FMBs, the petitioner had presented a petition before the RDO, Mettur on 27.09.2022 to rectify the same. But the RDO had not issued any order regarding the same till now. In such circumstances, if the commissioner had measured the properties of the petitioner and the respondents, that will cause much hindrance and property loss to the petitioner. Though memo was issued by the petitioner to the commissioner on 23.09.2023, he had completed the measurement.

1.4. Since, the 2 ares of the petitioner was mingled with the property of the respondents, the field measurement and the FMB was not tallied. In such circumstances, the commissioner had filed his report before this court on 15.04.2024 with wrong measurements. Based on the commissioner report, if trial has been conducted, the petitioner will be put to great loss and injury. Therefore, the commissioner report has to be scrapped. Hence, this petition.

2. Brief facts in the counter filed by the 3rd respondent and adopted by the respondents 1 and 2 is as follows:

2.1. The respondents had specifically denied the averments put forth in the petition. The petitioners are trying to mislead this court without any merits. The respondents had never claimed any property from the petitioner as per their title as well as the suit property and entire documents. The respondents had owned to an extent of 2.50.0 hectares alone and they were enjoying the above extent through the Survey no. 164/2B. In the said Survey no. 164/2B on the north west portion, the petitioner had obstructed and encroached the portion of pathway by constructing cattle shed and fully covered by wire fencing. In these circumstances, the respondents had enlightened the real state of affairs by measuring the encroachment made by the petitioner in the suit pathway.

2.2. Already commissioner had visited the suit property 3 times. On each and every visit, the petitioner had willfully given lot of troubles and only with a view to obstruct the measurements created several annoyance. On the 3rd visit, the petitioner had filed a petition to give direction and stay the commissioner's visit in I.A.No. 03 of 2022 with same allegations. Subsequently, on 19.04.2023, the petition was not pressed by the petitioner. Now the claim is not maintainable according to law. The petitioner's allegation of excess of land in the respondent's land is not a criteria. It has to be decided that the petitioner had encroached the pathway cart track on the north-west portion in the Survey no. 164/2B by constructing cattle shed. Hence, this petition is liable to be dismissed.

3. No oral evidence on either side. Ex.P1 to Ex.P6 marked on the side of the petitioner. No documentary evidence on the side of the respondents.

4. Points for Consideration:

(i) Whether this petition has to be allowed or not ?

5. Both side rival submissions heard with regard to their respective pleadings and perused the materials on record. The original suit is filed by the respondents/petitioners/plaintiffs for the relief of permanent injunction restraining the petitioner/respondent/defendant and their men or any one on his behalf from in any manner interfering the plaintiffs possession in the suit 'A' schedule property and declaring that the suit 'B' schedule properties is common to the plaintiffs and the defendant and to recover the encroached portions as mentioned in the suit 'C' schedule properties for common enjoyment and cart track pathway and to direct the respondent to remove the encroachment in the suit 'C' schedule properties within the time fixed by this court.

6. Admittedly, in this instant case on hand, an advocate commissioner was appointed and he had inspected the suit properties and had filed his report and plan on 15.04.2024. It is also an admitted fact as alleged by the petitioner herein that the patta for the property of the petitioner in Survey no. 164/2B was issued in respect of 2.72.00 hectares of land in patta no. 870, while the FMB sketch for the said property stands only for an extent of 2.70.00 hectares i.e) less in 2 ares. Like wise, the patta for the property of the respondents in Survey no. 164/2A in patta no. 869 was issued to an extent of 2.50.50 hectares, whereas the FMB sketch for the said property stands for an extent of 2.52.00 hectares i.e) excess in 2 ares. The same was evident from the Ex.P1 to Ex.P5 marked on the side of the petitioner.

7. The respondents herein had also not disputed the above mistakes in respect of the measurements in the FMB sketch of the property of the petitioner and the respondents in comparing with the patta of their respective properties. Therefore, it is clear that 2 ares of land was shown in less in the FMB sketch of the petitioner's

property, than the patta issued in his favour and 2 ares of land was shown in excess in the FMB sketch of the respondents property, then the patta issued in their favour. Such being the position, the commissioner report which was filed by measuring the suit properties only based on the revenue records could not be taken as aid to arrive a fair conclusion in this original suit proceedings. At the same time, scabbing the said commissioner report would also does not serve any purpose, because the commissioner had inspected and measured both the property of the petitioner and the respondents, which is also evident from his report dated 15.04.2024.

8. On perusal of the plaint pleadings, it shows that the respondents/petitioners/plaintiffs are claiming their right over the alleged common cart track and the alleged encroachment made therein as per the partition deed dated 25.08.2000 in document no. 573/2000, wherein the petitioner herein is also a party to the same and the vendor of the respondents is also a party to the same and the sale deed dated 18.01.2006 in document no. 42/2006 in his favour in respect of the suit properties. The petitioner/respondent/defendant is also not disputing the said partition deed dated 25.08.2000 and the sale deed dated 18.01.2006. This court had also perused the said partition deed dated 25.08.2000 and sale deed dated 18.01.2006, which was filed as a plant document no. 01 and 02.

9. The disputed cart track is described in the said partition deed 25.08.2000 as a common property to the petitioner and the vendor of the respondents as follows, “பொது ஷரா: தின்னப்பட்டி கிராமத்தில் நம்மில் 3 நபருக்கு (petitioner herein) பாத்தியப்பட்ட ச.நெ 164 / 2 பி நிலத்தில் நம்மில் 3,4 (petitioner herein and vendor of the respondents) நபர்களுக்கு பாத்தியப்பட்ட வீடு வரை கொளத்தூர் உக்கம்பருத்திகாடு செல்லும் தார் சாலையிலிருந்து கிழக்கிலிருந்து மேற்காக 12 அடி அகலத்தில் செல்லும் பாதை நம் இருவருக்கும் பொதுவானது”

10. The disputed cart track is described in the said sale deed dated 18.01.2006 is as follows, "வை நில்த்திற்கு எங்களில் 1 லக்கமிட்டவருக்கு (vendor of the respondents) கொளத்தூர் சார் பதிவு அலுவலகத்தில் 2000 ம் ஆண்டின் 573 ம் எண்ணாக பதிவு செய்யப்பட்டுள்ள பாகபிரிவினை ஆவணத்தில் பொது ஷராவில் குறிப்பிட்டுள்ள தடவழி பாதை பாத்தியங்கனும் ஷ நில்த்திற்கு எப்போதும் போல் செல்லும் மாமூல் வழி நடை பாதை பாத்தியங்கள் சகிதமும்".

The said disputed cart track is mentioned as 'B' schedule in the plaint. The property of the petitioner in Survey no. 164/2B to an extent of 2.72.0 hectares and the property of the respondents in Survey no. 164/2A to an extent of 2.50.5 hectares was also described in the partition deed dated 25.08.2000. As already stated supra, the petitioner herein and the respondents herein were claiming their right over their respective property and the disputed cart track through the said partition deed dated 25.08.2000 and the sale deed dated 18.01.2006. At this juncture, this court considers that if the advocate commissioner had measured the suit properties and the petitioner's property as per the admitted document i.e) the partition deed dated 25.08.2000 and the sale deed dated 18.01.2006 and had filed the supplementary report and plan in this regard, the same would be very much helpful in order to arrive a fair determination in the suit proceedings.

11. Though the learned counsel for the petitioner had submitted that measurements can be made through the old FMB sketch of the suit properties, no such document was produced by the petitioner till today. Therefore, the said contention could also cannot be considered. From the overhaul discussion, this court comes to the conclusion that scrapping the commissioner report is not warranted in this case, rather, the advocate commissioner can be directed to file a supplementary report as aforesaid.

In the result, this petition is dismissed in respect of scrapping the commissioner report. At the same time, the advocate commissioner Mr. K. Madhayan., B.A., B.L., is hereby directed to inspect and measure the suit properties and the petitioner's property in Survey no. 164/2B as per the partition deed dated 25.08.2000 in document no. 573/2000 and the sale deed dated 18.01.2006 in document no. 42/2006 along with the help of a qualified surveyor and VAO and to note down its physical features and to file a detailed supplementary report with sketches. The advocate commissioner is directed to give notice to both parties before inspection. His remuneration is fixed as Rs.5,000/- and to be paid directly to the advocate commissioner by the petitioner herein. For supplementary report and plan call on 30.06.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 27th day of April 2026.

**District Munsif,
Mettur.**

Petitioners side witnesses : Nil

Petitioners side exhibits :

Ex.P1	21.09.2022	Patta for the property in Survey no. 164/2B	Online Copy
Ex.P2	21.09.2022	Patta for the property in Survey no. 164/2A	Online Copy
Ex.P3	21.09.2022	FMB sketch for the property in Survey no. 164/2B	Online Copy
Ex.P4	21.09.2022	FMB sketch for the property in Survey no. 164/2A	Online Copy
Ex.P5	13.10.1986	Proceedings of the Tahsildar, Mettur	Photocopy
Ex.P6	27.09.2022	Petition given before the Sub-Collector, Mettur by the petitioner	Hand Copy

Respondent side witnesses and exhibits: Nil

**District Munsif,
Mettur.**

District Munsif Court, Mettur
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O.S. No. 102 of 2021
Fair Order, Dated: 27.04.2026.