

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

District Munsif, Mettur

Friday, this the 12<sup>th</sup> day of December 2025**I.A.No. 09 of 2025****in****O.S. No. 69 of 2021**

(CNR No. TNSA17-000086-2021)

Kannaiyan

... Petitioner/Plaintiff

/versus/

1. Sagunthala
2. Kalaiyarasi
3. Raghupathi

... Respondents/Defendants

This petition is heard in the presence of Mr. K.P. Swamynathan., B.Com., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. L. Ganapathy Subramaian., M.A., L.L.B, the Learned counsel for the Respondents/Defendants. Enquiry heard 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 and measure the suit properties and to note down its physical features and to file his report and plan.

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

1.1. The petitioner is the plaintiff in the original suit and the same was filed for the relief of permanent injunction. The suit 1<sup>st</sup> and 2<sup>nd</sup> item of property belongs to the mother of the petitioner and she had purchased the same vide a registered sale deeds dated 19.03.1980 and 21.04.1980 from the 1<sup>st</sup> respondent. Then the mother of the petitioner had settled the suit properties in favour of the petitioner

vide a settlement deed dated 19.11.1999 and was being in possession of the same by constructing a house building in the suit 1<sup>st</sup> item of property. The suit 2<sup>nd</sup> item of property is the pathway to reach the house in the suit 1<sup>st</sup> item of property.

1.2. The respondents had demanded to sell the suit properties to them and the same was refused by the petitioner. Due to the said enmity, the respondents had started to disturb the petitioner's possession and also tried to obstruct the suit 2<sup>nd</sup> item pathway. Hence, the petitioner had filed the suit for permanent injunction. While the suit is pending, in the 2<sup>nd</sup> month of 2023, the respondents had constructed their compound wall in the suit 2<sup>nd</sup> item of property. Though the petitioner had tried to stop their illegal act, without hearing the words of the petitioner, they had completed the construction.

1.3. The peoples around the locality had stated that since the respondents had constructed the compound wall during the pendency of the suit, the same would be decreed including the compound wall. Hence, the petitioner had also not disclosed the same to his counsel. But during the cross examination, the other side counsel had put forth a question with regard to the construction of the compound wall and about the application if any filed for the appointment of commissioner. After that, the counsel for the petitioner had conveyed that if the compound wall is constructed during the pendency of the suit, an application to appoint an advocate commissioner has to be filed and the prayer of mandatory injunction has to sought for. Hence, this petition is filed by the petitioner to appoint an advocate commissioner.

## **2. Brief facts in the counter statement filed by the respondents is as follows:**

2.1. The respondents had specifically denied the averments put forth by the petitioner in his petition. The respondent had constructed the compound wall by leaving a space of 2 feet in the year 2015 itself. But the petitioner had wrongly

averred as such it was constructed only in the year 2023. In a suit for bare injunction, advocate commissioner could not be appointed. This petition is filed by the petitioner belatedly. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on either side.

#### **4. Points for Consideration:**

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

5. Both side rival submissions heard and perused the pleadings and materials on record. The original suit is filed by the petitioner/plaintiff for the relief of permanent injunction restraining the respondents/defendants from in any way causing disturbance to the petitioner's possession in the suit property.

6. It is the contention of the petitioner that the suit 1<sup>st</sup> and 2<sup>nd</sup> item of property belongs to their mother vide a registered sale deeds dated 19.03.1980 and 21.04.1980 and the same was purchased from the 1<sup>st</sup> respondent. Then the mother of the petitioner had settled the suit properties in favour of the petitioner vide a settlement deed dated 19.11.1999 and now the petitioner is being in possession of the suit 1<sup>st</sup> item of property by constructing a house building and the suit 2<sup>nd</sup> item of property is a pathway to reach the suit 1<sup>st</sup> item of property.

7. It is the further contention of the petitioner that while the suit is pending, the respondents had constructed a compound wall in the suit 2<sup>nd</sup> item of property on the 2<sup>nd</sup> month of 2023 and since the peoples around the locality had stated that since the respondents had constructed the compound wall during the pendency of the suit, the same would be decreed including the compound wall, the petitioner had also not disclosed the same to his counsel. But during the cross examination, the

other side counsel had put forth a question with regard to the construction of the compound wall and about the application if any filed for the appointment of commissioner. After that, the counsel for the petitioner had conveyed that an application to appoint an advocate commissioner has to be filed and the prayer of mandatory injunction has to be sought for.

8. Per Contra, the respondent had contended that the said compound wall was constructed even in the year 2015 by leaving 2 feet space.

9. On perusal of the pleadings of either side in this petition and in the original suit, it shows that there is no dispute between the parties with regard to the existence of the pathway in the suit 2<sup>nd</sup> item of property. The petitioner herein had also filed an application to amend the suit by including the prayer for mandatory injunction to remove the compound wall alleged to be constructed in the suit 2<sup>nd</sup> item pathway in I.A.No. 8 of 2025 and the same was pending. It is the contention of the petitioner that the respondents had encroached the suit 2<sup>nd</sup> item of pathway and constructed compound wall therein. It is well settled that if there is an allegation that the property has been encroached by the respondent, it is incumbent on the court to decide where the disputed portion is located and whether or not it forms part of the property claimed by the petitioner. In this context, this court wants to rely on the judgment of the **Hon'ble Andhra High Court** in the case of **Bandaru Mutyalu And Another vs Palli Appalaraju** reported in **AIRONLINE 2013 AP 120**, wherein, it was held by their Lordships that in situations where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The denial of the respondent as such the said common wall was constructed in the year 2015 itself are all could be decided only in the original suit proceedings after considering the oral and documentary evidence, if any, let in by the either side in this regard. This court forms opinion that

if an advocate commissioner had been inspected and measured the suit properties and filed a report, it would certainly be helpful for the proper adjudication and fair determination of the suit proceedings.

10. With regard to the filing of this petition to appoint an advocate commissioner belatedly is concern, admittedly the petitioner had contended that the respondent had constructed the compound wall in the 2<sup>nd</sup> month of 2023. But this petition is filed after a period of nearly 2 ½ years, that too, after putting forth a question by the other side in this regard. At this juncture, this court wants to rely on the observation of **Our Hon'ble Madras High Court** in the case of **Perumal vs Perumal and another in CRP (PD) No.19 of 2020**, wherein the Hon'ble Lordships had observed as follows,

*9. The trial Court has non-suited the petitioner on the sole ground of delay. Of course, the petitioner must have been more vigilant and should have filed the petition at an earlier stage. But for the reason of delay alone, the Court should not shut out the best evidence preventing itself from being in a position to answer the issues that arise in the suit with the aid of best evidence. After all, the petitioner by seeking appointment of an Advocate Commissioner before the trial Court is seeking to let in the best evidence. I am of the considered opinion that the trial Court was not right in dismissing the application on the ground of delay. Hence, the order of the trial Court is set aside. This Civil Revision Petition is allowed. I.A.No.482 of 2019 in O.S.No.254 of 2013 on the file of the District Munsif, Dharmapuri stands allowed. The trial Court viz., the District Munsif, Dharmapuri is directed to appoint the Advocate Commissioner, within a period of one week from the date of receipt of a copy of this order and with the direction to the Advocate Commissioner to inspect the property and file a report within a period of one month thereafter.*

On perusal of the above observation of Our Hon'ble Madras High Court, it is crystal clear that the delay alone is not a ground to dismiss the commissioner application, if it is warranted in the facts and circumstance of the case. Therefore, the contention of the respondents to this effect is also liable to be dismissed.

**In the result, this petition is allowed. Advocate Mr. Ranjith is appointed**

as an advocate commissioner in this petition.

(i) He is directed to inspect and measure the suit properties and to note down its physical features and to 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 to be paid directly to the advocate commissioner. For commissioner report and plan call on 29.01.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 12<sup>th</sup> day of December 2025.

**District Munsif,  
Mettur.**

**Both side witnesses and exhibits: Nil**

**District Munsif,  
Mettur.**