

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

District Munsif, Mettur

Saturday, this the 19th day of July 2025**I.A.No. 03 of 2021****in****O.S. No. 67 of 2021**

(CNR No. TNSA17-000082-2021)

Chinnathambi

... Petitioner/Plaintiff

/versus/

1. Pon. Srinivasan
2. Balathandayutham
3. Sundaram
4. Palanisamy
5. Muthukumaran
6. Chinnathambi
7. Boopathi

... Respondents/Defendants

This petition is heard in the presence of Mr. P.Siddhan, B.A., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. K.Madhaiyan, B.A., B.L., the Learned counsel for the 1st Respondent/1st Defendant and Mr. L.Ganapathy Subramanian, M.A., L.L.B., the Learned counsel for the 5 to 7 Respondents/5 to 7 Defendants. The 3rd and 4th respondents were set-exparte on 04.04.2022 and 2nd respondent was set-exparte on 09.01.2025. 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 note down the physical features and drawn to scale by the qualified surveyor with the help of VAO and to file his report with 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. The petitioner and the respondents are related to each other. The suit property is allotted to the father of the petitioner in the oral partition effected among the family member of the Chinnathambi Gounder, who is the grand father of the petitioner and the father of the Palaniappa Gounder including the suit cart track situated in the respondents property in Survey no. 5/1B in Dasakapatti revenue village. Since, then the father of the petitioner and their family members are in physical and exclusive possession and enjoyment of the suit property including the easementary rights of pathway through the properties of the respondents.

1.2. The petitioner's properties in Survey no's. 5/1A1, 5/1A2 and 5/1A3 are situated on the northern side of the respondents land situated in Survey no. 5/1B. There is a cart track of 2.8 meter with a breadth of 2 meters that situated in the north eastern corner of the respondents property that deviates from Singarapettai road to Surapalli road, which runs from north to south from Vanavasi to Soragai road. The said cart track is situated in the lands of the respondents in Survey no. 5/1B, which was used time immemorial by the petitioner to go to his land to bring men and materials, bullocks, tractors, lorries, etc. There is no alternative cart track or pathway available therein.

1.3. The respondents, who are close relative of the petitioner is having eye over the properties of the petitioner and often demanded to sell the same, which was refused by the petitioner. Due to the said reason, they are preventing the petitioner to bring men and materials, bullocks, tractors, lorries, etc through the cart track to reach the lands of the petitioner. The respondents are not amenable for any settlement by way of panchayat and hence, this suit is filed for the relief of permanent injunction along with this application to appoint an advocate commissioner.

2. Brief facts in the written statement filed by the 1st respondent, which was adopted as counter in this petition is as follows:

2.1. This respondent had admitted the case of the petitioner and the existence of the cart track in the suit property and the usage of the petitioner therein and denied the averments of the restraint made in the suit cart track.

3. Brief facts in the written statement filed by the 5 to 7 respondents, which was adopted as counter in this petition is as follows:

3.1. These respondents specifically denied the averments put forth in the petition filed by the petitioner and the existence of the suit cart track in the suit property and the alleged usage of the same by the petitioners. These respondents had partitioned their properties vide a partition deed dated 10.05.1999 in document no. 1542/1999 and there was no such cart track mentioned therein. The respondents were enjoying their properties allotted through the said partition. There was no such cart track in the suit 3rd item of property and the same was neither used by the petitioner nor their father. Hence, this petition is liable to be dismissed.

4. The 3rd and 4th respondents were set-exparte on 04.04.2022 and 2nd respondent was set-exparte on 09.01.2025 for their non-appearance, even after the receipt of court notice.

5. No oral and documentary evidence on either side.

6. Points for Consideration:

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

7. Both side rival submissions heard with regard to their pleadings and perused the materials on record. The petitioner had filed the original suit for the

relief of declaration of title over the suit cart track and consequential relief of permanent injunction. It is the case of the petitioner that the petitioner and the respondents are related to each others and the suit properties was allotted to the father of the petitioner by way of oral partition held between their family and there exist a cart track to a length of 2.8 meter with a breadth of 2 meters, which runs through the lands of the respondents in Survey no. 5/1B and the same was used by the petitioner and their father to bring men and materials, bullocks, tractors, lorries, etc to their land and there is no other alternative pathway and the respondents, who failed in their attempt to purchase the suit properties from the petitioner had started to prevent the petitioner from the usage of the said cart track.

8. The 1st respondent had admitted the existence of the said cart track and the usage of the same by the petitioner and the respondents. But the respondents 5 to 7 herein had disputed the existence of the suit cart track and usage of the same by the petitioner and their family.

9. Therefore, the question to be decided here is whether there exist a car-track road 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 car-track and what is the nature of the car-track and the measurement of the car track , which are all could be decided only by appointing an Advocate Commissioner. Therefore the appointment of Advocate Commissioner in the present case cannot also be stated that it is for collecting evidence or to prove the possession of the property. In the case of **Indirani vs Natarajan** 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. This court further forms opinion that if an advocate commissioner had been appointed to inspect and measure the

suit properties and to file a report, it would 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. Kanagaraj 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 with regard to the existence of the cart track and drawn to scale by a qualified surveyor along with the help of VAO and to submit 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 18.08.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 19th day of July 2025.

Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.

Petitioner side witnesses and exhibits: Nil

Respondents side witnesses and exhibits: Nil

Sd./-Thiru.M.Selvam,
District Munsif,
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