

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

District Munsif, Mettur

Wednesday, this the 08th day of July 2026**I.A.No. 02 of 2025****in****O.S. No. 99 of 2025**

(CNR No. TNSA17-000121-2025)

Suganthalakshmi

... Petitioner/Plaintiff

/versus/

P. A. Shanmugam

...

Respondent/Defendant

This petition is heard in the presence of Mr. P. Siddhan., B.A., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. B. Balamurugan., M.A., M.L., the Learned counsel for the Respondent/Defendant. 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 to note down the physical features of the petition mentioned properties and to submit his report along with plan drawn to scale with the help of qualified surveyor.

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 she is the absolute owner of the suit 1st item of A and B schedule of property and she inherited the same from her father namely Ramasamy and her ancestor and was residing therein along with her sister and brothers and other family members. The respondent is the adjacent land owner in Survey no. 76/2B1B2 to an extent of 442.5 sqft, which was

purchased from the father of the petitioner. The said property is suit 2nd item of property and the same is located on the western side of the suit 1st item of property. The respondent and his family members were residing therein by constructing RCC building.

1.2. For the past few months and on 15.06.2025, the respondent by taking advantage of the petitioner's loneliness is trying to grab a vast portion of the 1st item of the suit property on its eastern side in order to annex the said property with the respondent's 2nd item of property. When the petitioner had questioned the same, the respondent had stated that he had purchased the 2nd item of suit property through the sale deed dated 21.05.2021 that includes a vast portion in the 1st item of the suit property. Though the petitioner had explained the real facts, he is not accepting the same. The respondent is not having any portion of land in the suit 1st item of property and he is not amenable for any settlement. Hence, the suit is filed for the relief of permanent injunction along with this application to appoint an advocate commissioner petition.

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

2.1. The respondent had specifically denied the averments put forth by the petitioner in her petition. The petitioner's property is of an extent of 4 cents and wherein, 1 cent of land and the house therein is in possession of the respondent in Survey no. 76/2B1B2 to an extent of 442.5 sqft, which was purchased by him from the parents of the petitioner for valuable consideration. The respondent had also purchased the property to an extent of 782 sqft in new Survey no. 76/25, old Survey no. 76/2B1B2 under UDR scheme from One Neelakandan for valuable consideration and he was being in possession of totally 1224.5 sqft of land and had also obtained patta in his name. The petitioner's father's sisters had filed a suit for partition in O.S.No. 100 of 2012 and O.S.No. 153 of 2010 on the file of Hon'ble Sub Court, Mettur and the respondent being a purchaser was impleaded therein and the same was pending for adjudication.

2.2. Since, the mother of the petitioner namely One Kalaivalli had picked up troubles with the respondent in respect of the suit properties, the respondent had filed a suit in O.S.No. 269 of 2008 on the file of this court and the same was decreed with condition that the respondent herein has not to make any construction in the suit property till the disposal of the suit for partition in O.S.No. 100 of 2012 and O.S.No. 153 of 2010 pending on the file of Hon'ble Sub Court, Mettur. In the appeal preferred in A.S.No. 26 of 2011, the same was decreed in favour of the respondent by holding that he is the absolute owner of the suit property therein. The petitioner had filed this present suit by suppressing the above facts.

2.3. Since, the issue in this suit was already decided in favour of the respondent, this present suit is barred by constructive res-judicata. There is no prima facie case on the side of the petitioner. The description of the suit property is wrong. The petitioner had filed the suit for the properties which she does not owns. The suit is also liable to be dismissed for non joinder of the parties, who were the parties in the above suit for partition in O.S.No. 100 of 2012 and O.S.No. 153 of 2010 pending on the file of Hon'ble Sub Court, Mettur. Hence, the suit and the present petition for appointment of advocate commissioner 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 for the purpose sought for in the petition ?

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 petitioner/plaintiff for the relief of permanent injunction restraining the respondent/defendant and his men from in any way disturbing with the possession and enjoyment of the 1st item of the suit property by the petitioner/plaintiff.

6. It is the case of the petitioner/plaintiff that the suit 1st item of property belongs to her by way of inheritance from her father and she was being in possession of the same along with his family members. The suit 2nd item of property in Survey no. 76/2B1B2 to an extent of 442.5 sqft, which is situated on the western side of the suit 1st item of property was purchased by the respondent from the father of the petitioner vide a sale deed dated 21.05.2001. But now the respondent is trying to grab the vast portion of the suit 1st item of property on its eastern side in order to annex the said property with the respondent's 2nd item of property by alleging that he had purchased the 2nd item of suit property including a vast portion in the 1st item of the suit property.

7. Per Contra, it has been contended on the side of the respondent that the petitioner's property is of an extent of 4 cents and wherein, 1 cent of land and the house therein is in possession of the respondent in Survey no. 76/2B1B2 to an extent of 442.5 sqft, which was purchased by him from the parents of the petitioner for valuable consideration. The respondent had also purchased the property to an extent of 782 sqft in new Survey no. 76/25, old Survey no. 76/2B1B2 under UDR scheme from One Neelakandan for valuable consideration and he was being in possession of totally 1224.5 sqft of land and had also obtained patta in his name.

8. On perusal of the pleadings of either side, it is clear that the real dispute between the parties is with respect to the measurements of their respective properties. Though the respondent had also averred certain other facts with regard to the pendency of the suit for partition filed by the petitioner's father's sisters, the same was not relevant for consideration in this present application for appointment of advocate commissioner and the relevancy of the said facts could only be decided in the original suit. Because, the respondent herein had himself admitted that he had purchased a portion of the suit property from the father of the petitioner. It is well settled that when the parties are neighbours and whereas, the

respondent/defendant is claiming some portion in the suit property, it is incumbent on the court to decide where the disputed portion is located and whether or not it forms part of the suit property of the petitioner/plaintiff.

9. At this juncture, 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 **AIR ONLINE 2013 AP 120**, wherein, it was held by their Hon'ble 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 relied judgment is squarely applicable to the present case on hand.

10. On perusal of the petition, it shows that the suit 2nd item of property is alleged to be purchased by the respondent vide a sale deed dated 21.05.2001, which is described as in Survey no. 76/2B1B2 to an extent of 442.5 sqft. The said property is alone being shown as the petition mentioned property in this petition. But since the dispute between the parties is with regard to the measurements of their respective properties, this court forms opinion that if the advocate commissioner is directed to inspect and measure both the suit 1st and 2nd item of property of the petitioner and the respondent respectively as per the title documents and the revenue records, the real dispute between the parties would be resolved and the same would also be very helpful to this court for fair and final determination of the suit proceedings. Hence, in the interest of justice, this court is inclined to allow this petition as aforesaid.

In the result, this petition is allowed. Advocate Mr. G. Sathish., B.L., is appointed as an advocate commissioner in this petition.

(i) He is directed to inspect and measure the 1st and 2nd item of suit properties described in the plaint schedule as per the title documents and revenue records of the parties along with the help of VAO and qualified

surveyor and note down it's physical features and to file a report and plan drawn to scale.

(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 30.07.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 08th day of July 2026.

District Munsif,
Mettur.

Both side witnesses and exhibits: Nil

District Munsif,
Mettur.