

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

District Munsif, Mettur

Friday, this the 21st day of August 2026**I.A.No. 01 of 2024****in****O.S. No. 40 of 2024**

(CNR No. TNSA17-000249-2024)

R. Sundararajan

... Petitioner/Plaintiff

/versus/

1. Shanmugam @ Raja

2. Arthanari

... Respondents/Defendants

This petition is heard in the presence of Mr. J. Prabakar., B.A., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. M. Muthukumaran., B.A., B.L., the Learned counsel for the 1st Respondent/1st Defendant. The 2nd respondent/2nd defendant was set-exparte on 14.06.2024. 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 the petition properties and to note down the physical features and measure boundaries drawn to scale with the help of surveyor and to file a 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 declaration of easementary right and permanent injunction. The petition properties is classified as three items and the 1st and 3rd item of property is the 'A' schedule of property and the 2nd item of property is the 'B' schedule of

property. The petitioners and the respondents are brothers to each other. The petition properties and other properties originally belonged to One Mr. Arthanari Gounder, who is the father of Rathinam @ Rathinavelu and he had possessed and enjoyed the same as an absolute owner till his demise. The said Rathinam @ Rathinavelu had four children namely R. Sundararajan, the petitioner herein, R. Shanmugam @ Raja, the 1st respondent herein, R. Arthanari, the 2nd respondent herein and One Saroja.

1.2. On 28.02.2013, they all had entered into a partition deed in document no. 981/2013, wherein the petition 'A' schedule property is allotted to the petitioner and the petition 'B' schedule property is allotted to the 1st respondent and they were also took possession of their respective properties. The 2nd item of property, which is the 'B' schedule herein is situated in between the 1st and 3rd item of property, which is the 'A' schedule. There is a common 15 feet pathway for the 'A' and 'B' schedule of properties situated on the northern side and the petitioner and the respondents is having that only way to ingress and egress their respective properties.

1.3. If the petitioner wants to reach the 3rd item of property from the 1st item, then the petitioner has to across the pathway across the 1st respondent's land, which is the suit 2nd item. Like wise, if the petitioner wants to reach the 1st item of property from the 3rd item of property, the same is the only access. The petitioner had acquired the right to access through the above said partition deed. In order to grab the 3rd item of property, the respondents had approached the petitioners and demanded to sell the same. Since, it was refused, in the 2nd and 3rd week of March 2024, all of sudden, the respondents tried to close the said 15 feet pathway by putting stone revetment. Hence, the suit for declaration of easementary right and permanent injunction is filed by the petitioner along with this petition to appoint an advocate commissioner to establish the case of the petitioner.

2. Brief facts in the counter statement filed by the 1st respondent/1st defendant is as follows:

2.1. The 1st respondent had specifically denied the averments put forth by the petitioner. The petitioners and the respondents are brothers to each other and they had also entered into a partition deed dated 28.02.2013 in document no. 981/2013 and acquired their respective properties. Under the said partition deed, there is a cart track in the B, C and D schedule therein, but there was no specific recitals or covenant portion about the measurement of the cart track as 15 feet, since it was allotted for the agricultural purpose.

2.2. The 1st respondent is also entitled to ingress and egress through 'B' and 'C' schedule to his house. The petitioner had tried to grab the 1st respondent land and colluded with the 2nd respondent and obstructed the 1st respondent to reach his house. The 1st respondent had not made any obstruction to the petitioner. There is no necessity to file an commission petition in this case. Hence, this petition is liable to be dismissed.

3. The 2nd respondent was set-exparte on 14.06.2026 for his non appearance, even after the receipt of court notice.

4. No oral and documentary evidence on either side.

5. Points for Consideration:

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

6. Both side rival submissions heard with regard to their respective pleadings and perused the pleadings and materials on record. The original suit was filed by the petitioner/plaintiff for the relief of declaration, to declare his right of easement to

access the 15 feet pathway in the 2nd item of the 'B' schedule property to ingress and egress and for the relief of consequential permanent injunction.

7. On perusal of the either side, it shows that the parties are not in dispute with regard to the execution of the partition deed dated 28.02.2013 in document no. 981/2013 entered between themselves and their family members and the properties allotted to them therein. They were also not in dispute with regard to their right to use the other lands to reach their respective properties allotted in the said partition and the existence of a cart track. The only dispute arise between the parties is with regard to it's measurement, whereas, the petitioner is claiming it to be 15 feet and whereas, it was denied by the 1st respondent and contended that it is only for agricultural purpose.

8. 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 **AIRONLINE 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.

Therefore, from the overhaul discussion, this court considers that the appointment of the advocate commissioner in this case is necessary in order to arrive a fair determination of the suit proceedings and the same would also helpful to resolve the real controversy between the parties. Hence, in the interest of justice, this court is inclined to allow this petition.

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

(i) He is directed to inspect the petition mentioned properties and note down it's physical features and the measurement of the disputed cart track in the 2nd item of the 'B' schedule property along with the help of Village Administrative Officer and Qualified Surveyor 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 08.10.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 21st day of August 2026.

District Munsif,
Mettur.

Both side witnesses and exhibits: Nil

District Munsif,
Mettur.

District Munsif Court
Mettur
I.A.No. 01 of 2024
in
O.S. No. 40 of 2024
Fair Order
Dated: 21.08.2026.