

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

Present: **Thiru. M.Selvam, B.A., B.L.,**

District Munsif, Mettur

Wednesday, this the 11th day of February 2026

I.A.No. 05 and 06 of 2025

in

O.S. No. 23 of 2017

(CNR.No. TNSA17-000126-2017)

1. Ammu
2. Ammasi
3. Logu
4. Boopathy

... petitioners/Defendants
in I.A.No. 5 and 6 of 2025

/Versus/

Kalavathy

... Respondent/Plaintiff
in I.A.No. 5 and 6 of 2025

These petitions are heard in the presence of Mr. S. Mohanram., M.A., M.L., the learned counsel for the petitioners/defendants in I.A.No. 5 and 6 of 2025 and Mr. M.K. Arjunan., B.A., B.L., the learned counsel for the respondent/plaintiff in I.A.No. 5 and 6 of 2025. Enquiry heard on both sides and having stood over for my consideration till this day, this court delivered the following,

COMMON ORDER

These petitions are filed by the petitioners/defendants to receive additional documents and to recall the DW1 for marking the said documents.

1. Brief facts in the petition is as follows:

1.1. The petitioners are the defendants in the original suit. The respondent/plaintiff had filed the suit for the relief of declaration and

mandatory injunction. The 1st petitioner was examined as DW1 and marked Ex.B1 to Ex.B2 and he was also partly cross examined by the respondent.

1.2. On 17.02.2021, the respondent had filed a petition for appointment of an advocate commissioner to note down the physical features of the suit property and he had inspected the same based on the partition deed dated 17.04.1952 and 15.06.1963 and filed his report. Based on the objection raised by the petitioners, this court had ordered to scale the property based on the both side documents as well as revenue records. The commissioner had scaled the properties based on the documents and had filed his report along with 10 documents, which are all the parental documents of the petitioners and the respondent. Hence, this petition is filed to receive the said additional documents and to recall the DW1 for marking the said documents.

2. Brief facts in the counters filed by the respondent is as follows :

2.1. The respondent denied the averments made by the petitioners in their petition. The commissioner had filed his report with clear measurement of the suit property and the area of the petitioners. Already, the respondent was examined as PW1 and marked Ex.A1 to Ex.A10. Therefore, it is false to say that the petitioners have the knowledge of the gift settlement deed in favour of the respondent now only.

2.2. The mother of the respondent has rightly gifted the suit property with correct measurements in favour of the respondent. All the facts in the plaint was proved by the respondent by marking all the relevant documents. This petition is filed to delay the suit proceedings. The petitioners had not given about the details of the suit property and the petitioners property in the written statement already filed by them.

2.3. After knowing the exact physical structure and the area encroached by the petitioners through the commissioner's measurement, in order to escape from the clutches of law, the petitioners had filed this petition. The petitioners are not having any legal right to change the earlier stand made by them. Hence, this petition is liable to be dismissed.

3. No oral and documentary evidence on either side.

4. Point for Consideration:

(i) Whether these petitions has to be allowed or not ?

5. Both side rival submissions heard with regard to their respective pleadings and perused the materials on records. The original suit was filed by the respondent/plaintiff seeking the relief of declaration, declaring the right and title of the respondent/plaintiff in the suit 'B' schedule property and for the relief of mandatory injunction directing the petitioners/defendants to remove the encroachment and construction in the 'B' schedule property. Admittedly, the stage of the case is for cross examination of DW1. At this juncture, the petitioners/defendants had come forward with these petitions to receive the additional documents and to recall the DW1 for marking the same.

6. It is the contention of the petitioners/defendants that an advocate commissioner was appointed in this case and he had inspected the suit property based on the parental documents of both the petitioners and the respondents and hence, it has to be filed before this court.

7. This court had gone through the commissioner report filed by the advocate commissioner and the documents filed by him. Admittedly, the commissioner had relied on certain documents in respect of the suit property,

which was not at all produced, either by the petitioners/defendants or the respondent/plaintiff. The petitioners had also filed an application in I.A.No. 07 of 2025 in order to receive the additional written statement with regard to the pleadings of the documents relied by the advocate commissioner at the time of inspection and measurement of the properties and the same was also allowed by this court today. The documents sought to be produced by the petitioners herein are all the documents pleaded by them in their additional written statement. Since, the said petition for receiving the additional written statement was allowed by this court, the documents put forth in the said pleadings could also be received in order to establish the defence of the petitioners in the original suit. No prejudice would be caused to the respondent in allowing this petition.

8. Further more, it is well settled principle that mere receiving of the documents would not amounts to adjudicating the rights of the parties and the relevancy and admissibility of the said documents could be decided at the time of marking the same as exhibits and at the time of examination of the witnesses, thereby making it as evidence. The above legal position was also reiterated by **Our Hon'ble Madras High Court** in the case of **Karuppusamy vs Devaraj** reported in **2016 (3) MWN (Civil) 792** relying on the judgment in the case of **Gurusamy and others vs Santhanam** reported in **2005 (4) MLJ 343**. Therefore, this court considers that there is no impediment in receiving the document sought to be produced by the petitioners. Hence, from the overhaul discussion and in the interest of justice and in order to avoid multiplicity of proceedings, this court inclined to allow these petitions.

In the result, these petitions are allowed. The DW1 is hereby recalled for the purpose of marking the documents filed along with these petitions. Considering the facts and circumstance of this case, there is no order as to cost.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 11th day of February 2026.

**District Munsif,
Mettur**

Both side witnesses and documents: Nil

**District Munsif,
Mettur**