

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

District Munsif, Mettur

Wednesday, this the 10th day of September 2025**I.A.No. 02 of 2024****in****O.S. No. 37 of 2024**

(CNR. No. TNSA17-000045-2024)

1. Mohana
2. Manikandan

... Petitioners/Plaintiffs

/Versus/

1. Arumugam
2. Krishnaveni
3. Senthil
4. Sivanesan

... Respondents/Defendants

This petition came up before me for final disposal in the presence of the learned counsel Mr. G. Kesavan., M.Com., B.L., L.L.M., appearing for Petitioners/Plaintiffs and the learned counsel Mr. N. Alagesan., B.Com., B.L., appearing for Respondents/Defendants. Upon hearing both sides arguments and after stood over for my consideration till this day, this court passed 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 petition mentioned property and to note down its physical features and it's measurements and to submit a report with a plan drawn to scale with the help of qualified Surveyor and such other features that may be pointed out at the time of visit.

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

1.1. The petitioners are the plaintiffs in the original suit. The 1st and 2nd respondents are husband and wife and the respondents 3 and 4 are their children.

The suit property originally belongs to the 1st petitioner and the same is jointly purchased by the 2nd petitioner in the capacity of the husband under a registered sale deed dated 04.05.2023 and they were in possession and enjoyment of the same by raising crops and cultivating the same.

1.2. The 1st respondent has purchased a land adjacent to the suit property from the same vendor of the petitioners namely Radhakrishnan and others by means of two registered sale deeds dated 16.09.2005 and 22.02.2013. In the said sale deeds, the vendor of the petitioners and the 1st respondents had categorically mentioned about the right of the well and electricity connection and as such the 1st respondent is entitled for 2/3rd and the petitioners are entitled for 1/3rd of the well portion and one common pathway for ingress and egress for both of them.

1.3. After that, the 2nd respondent had purchased one portion of land, which is adjacent to the land of the 1st respondent by registered sale deed dated 11.08.2008, in which there is no irrigational facilities. While so, before the purchase of the property of the petitioner and the respondents 1 and 2, both of them had colluded each other and utilized the water from the well and pump set in the suit property. After purchase, the petitioners insisted that not to use the irrigation right of the 1st respondent to the 2nd respondent's land, which is no way connected to the property purchased by them and through some third parties. .

1.4. But the respondents had collusively given troubles to the petitioners and their vendors and on 22.06.2023, the respondents had assaulted the vendor of the petitioners namely Radhakrishnan and he had admitted the Government Hospital, Omalur and in pursuance, a criminal case in FIR No. 349 of 2023 was registered as against the respondents 2 and 3.

1.5. Even after the above, the respondents kept quite for some time and started to give troubles to the petitioners and the said Radhakrishnan and hence,

once again a complaint was lodged as against them on 28.08.2023. Thereafter, the 1st respondent had also purchased another property adjacent to the property of the petitioners vendor, in which also there is no irrigational facilities. For that land also, the respondents are using the water and electricity connections and other fittings from the well belongs to the petitioner and the 1st respondent. Further, the respondents had destroyed the pipeline and other utilities towards the irrigation of their land from the common well and the respondents had also forcibly constructed one store room for their own use in the common well portion. By this incidents, they were continuously disturbing the possession and enjoyment of the petitioners in the suit property and hence, this suit is filed for the relief of declaration and injunction along with this commissioner application.

2. Brief facts in the written statement, which was adopted as counter in this petition is as follows:

2.1. The respondents specifically denied the averments made by the petitioners in their petition. The pipe line was installed in the petitioners property for several years before and this suit is filed only to restrain the same. The water is being carrying on from the suit well to the respondents property for several years. The respondents had installed separate pump set in the suit well. If this court is inclined to appoint an advocate commissioner, the respondents pray to inspect their properties too.

3. No oral evidence on either side. Ex.P1 to Ex.P6 marked on the side of the petitioners and Ex.R1 to Ex.R5 marked on the side of the respondents.

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. Discussion:

5.1. Both side rival submissions heard with regard to their respective pleadings and perused the materials on record. The original suit is filed by the petitioners/plaintiffs for the relief of declaration, to declare their 1/3rd right over the common well and irrigational fittings and pipelines and 5 HP motor and common pathway and to restrain the respondents from using the same to other lands except the land belongs to the 1st respondent and to restore the pipeline and other utilities, which was used for the irrigational purpose from the common well to the petitioner lands by way of mandatory injunction and to remove the store room, which was constructed in the undivided common well portion in the suit property.

5.2. It is the contention of the petitioners that the 2nd respondent is wife of the 1st respondent and the respondents 3 and 4 are their children and the petitioners and the 1st respondent had purchased their respective properties from the same vendor with irrigational right in the suit common well for their respective properties and the 2nd respondent had purchased an adjacent property from some third parties and was using the common well belongs to the petitioners and the 1st respondent jointly, to carry on water for the irrigational works in her land. Thereafter, the 1st respondent, who had purchased another property nearby the suit property with no irrigation facility had utilizing the common well for the irrigational purpose and also disturbing the possession of the petitioners in the suit property. Further, the respondents had destroyed the pipeline and other utilities towards the irrigation of their land from the common well and the respondents had also forcibly constructed one store room for their own use in the common well portion.

5.3. The respondents though disputed the plaint averments, they had also sought to appoint an advocate commissioner, however pleaded to inspect and measure their properties also. Further, the respondents had contended that the pipe line was installed in the petitioners property for several years before and this suit is filed only to restrain the same and the water is being carrying on from the suit well

to the respondents property for several years and the respondents had installed separate pump set in the suit well. Further, the petitioners had also sought for to restore the pipeline and other utilities, which was used for the irrigational purpose from the common well to the petitioner lands by way of mandatory injunction, which was alleged to be destroyed by the respondents and to remove the store room, which was constructed in the undivided common well portion in the suit property. However, the same was specifically denied by the respondents.

5.4. At this juncture, this court forms opinion that, if an advocate commissioner had been appointed to inspect and measure the suit property and the respondents property and filed a report, it would certainly be helpful for the proper adjudication and fair determination of the suit proceedings and also to identify the physical features of the suit properties and the respondents properties. Either parties had not shown any objection in respect of the same. 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 Mrs. K. Usha is appointed as an advocate commissioner in this petition.

(i). She is directed to inspect and measure the petition mentioned property and the respondents properties and to note down its physical features and it's measurements and to submit a report with a plan drawn to scale with the help of qualified Surveyor and such other features that may be pointed out at the time of visit.

(ii). The advocate commissioner is directed to give notice to both parties before inspection.

(iii). Her remuneration is fixed as Rs. 10,000/- and to be paid directly to the advocate commissioner. For commissioner report and plan call on 10.10.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 10th day of September 2025.

**District Munsif,
Mettur.**

Petitioners side Witness: Nil

Petitioners side Exhibits:

Ex.P1 - 04.05.2023 - Sale deed in favour of the 2nd petitioner - Certified Copy
Ex.P2 - 16.09.2005 - Sale deed in favour of the 1st respondent - Certified Copy
Ex.P3 - 11.02.2008 - Sale deed in favour of the 2nd respondent - Certified Copy
Ex.P4 - 25.02.2013 - Sale deed in favour of the 1st respondent - Certified Copy
Ex.P5 - 29.03.2024 - Patta Nos.3085, 1558, 3095 - Online Copy
Ex.P6 - 22.06.2023, 28.08.2023 - First Information Report - Online Copy

Respondents side Witness: Nil

Respondents side Exhibits:

Ex.R1 - 16.09.2005 - Sale deed in favour of the 1st respondent - Certified Copy
Ex.R2 - 25.02.2013 - Sale deed in favour of the 1st respondent - Certified Copy
Ex.R3 - 25.05.2015 - Pathway Sale deed in favour of the 1st respondent and Radhakrishnan - Certified Copy
Ex.R4 - 05.02.2025 - Patta No.1559 - Online Copy
Ex.R5 - 05.02.2025 - FMB sketch - Online Copy

**District Munsif,
Mettur.**