

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

District Munsif, Mettur

Wednesday, this the 23rd day of July 2025**I.A.No. 01 of 2024****in****O.S. No. 137 of 2024**

(CNR No. TNSA17-000193-2024)

Palaniappan

... Petitioner/Plaintiff

/versus/

Palanisamy

... Respondent/Defendant

This petition is heard in the presence of Mr. G. Ravigandhi., B.Com., L.L.B., the Learned counsel for the Petitioner/Plaintiff and Mr. J. Prabhakar, B.A., B.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 for the purpose to inspect and measure the suit property with the help of surveyor and 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 suit property herein is a common pathway belongs to the petitioner and the respondents. The said common pathway was also mentioned in the sale deed of the petitioner and the respondent in document no. 1546/2015 and 1545/2015 respectively. The extent of the common pathway is acre 0.01 cents. The respondent had encroached the suit common pathway. Hence, the petitioner had applied to survey his property in Survey no. 79/6 with new Survey no. 79/6E and the suit common pathway in

Survey no. 79/7 with new Survey no. 79/7E. When ever the revenue officials came to measure the same, the respondent would restrain it. The petitioner had also lodged complaint before the police concern, but they had not taken any steps.

1.2. On 07.05.2022 to 11.05.2022, the petitioner was undergone heart surgery and at this time, the petitioner had encroached a portion of petitioner's property and the suit common pathway and had constructed his house. The respondent had encroached to an extent of 6 x 6 feet in the common pathway and 6 x 55 feet in the property in Survey no. 79/6D3A. Both the petitioner and the respondent had agreed to leave the common pathway only for the purpose of transportation and then only the same was included in their respective sale deeds. Hence, this suit is filed along with this petition to appoint an advocate commissioner to inspect and measure the suit property.

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

2.1. The respondent had specifically denied averments put forth by the petitioner in his petition. The property in Survey no. 79/6 and Survey no.79/7 originally belonged to One Marimuthu and his brother Ammaiappan and they were in possession of the same. The petitioner is the one of the son of the said Ammaiappan and the respondent is the one of the son of the said Marimuthu. The petitioner's mother had left the home, when the petitioner was at childhood. From that onward, the respondent's father had taken care of the petitioner and their father. The petitioner was convicted for a murder case and the respondent's father had sold out a portion of their property and conducted the case and brought him out. The petitioner's father was died on 10.03.2004. The funerals of the petitioner's father was done in the respondent's house.

2.2. Even before the execution of the sale deeds, the two houses were in existence. When the sale deeds of the petitioner and the respondent was executed,

the common pathway was not at all measured. The surveyor also stated that common pathway was not available on the ground to an extent of acre 0.01 cents. The said deeds have been executed only in order to enjoy the available extent of the common pathway. Hence, the length and breadth of the common pathway was not mentioned in their respective sale deeds. The suit is liable to be rejected for non joinder of the other legal heirs of the deceased Mariappan and Ammaiappan.

2.3. If the respondent had already encroached the suit common pathway, then the sale deed would have been executed with an recitals that the respondent has to remove the encroachment in the suit common pathway. The respondent had built his house even before 15 years ago. The petitioner is not entitled to claim the common pathway to an extent of 0.01 cents and there is enough pathway to the extent of 18 feet. Hence, this petition 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 in this petition for the purpose sought for in the petition ?

5. Both side rival submissions heard with regard to their pleadings and perused the materials on record. The original suit is filed by the petitioner/plaintiff for the relief of mandatory injunction directing the respondent/defendant to remove an extent of 6 x 6 feet of encroachment made by him in the suit common pathway in Survey no. 79/6E and to remove the encroachment to an extent of 6 x 55 feet in the property of the petitioner/plaintiff and to remove the wall constructed in the petitioner's property and for the consequential relief of permanent injunction.

6. The existence of the suit common pathway is admitted by the respondents. However, he had disputed that there is no such extent of 0.01 cents in the suit

common pathway even at the time of the execution of their respective sale deeds in the year 2015. Further, the respondent had also disputed the alleged encroachment either in the suit common pathway or the petitioner's property as alleged in the plaint. At this juncture, it is necessary to find out whether the respondent herein had encroached the suit common pathway and the petitioner's property as averred in the plaint. Therefore, this court forms opinion as such the allegation of encroachment of land was put forth by the petitioner/plaintiff in his pleadings, an advocate commissioner can be appointed for local investigation, as such the oral evidence would not aid the parties to decide the alleged encroachment.

7. Further, It is well settled that if there is an allegation that the property belonging to the petitioner is being encroached by the respondents, it is incumbent on the court to decide where the disputed portion is located and whether or not it forms part of the property claimed by the petitioner. In this context, 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 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. 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.V.Ranadev., B.L., 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 the help of a surveyor and 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 23rd 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,
Mettur.