

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

District Munsif, Mettur

Thursday, this the 11th day of December 2025**I.A.No. 02 of 2025****in****O.S. No. 194 of 2025**

(CNR No. TNSA17-000248-2025)

Chinnappan

... Petitioner/Plaintiff

/versus/

Nadesan

... Respondent/Defendant

This petition is heard in the presence of Mr. L. Stalin Raja., B.A., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. P. Kathiravan., 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 the suit properties and to note down its physical features along with the help of Village Administrative Officer and Qualified Surveyor and to file his 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, mandatory injunction and permanent injunction. The respondent is the brother of the petitioner. The suit properties and other properties originally belonged to their father Appugounder. During his life time, the petitioner and the respondent along with their other brothers and their father had entered into a registered partition deed dated 30.04.1984 in document no. 362/1984 and the

petitioner herein is allotted with 'E' schedule and the respondent is allotted with 'C' schedule therein and they were placed in possession of their respective properties. The respondent herein had applied for allotment of separate survey number for his property and in pursuance, the properties in Survey no. 28/1 and 28/2 were subdivided as Survey no's. 28/1A, 28/1B, 28/2A, 28/2B, 28/2C, 28/2D, 28/2E, 28/2F. The properties in Survey no. 28/1B and 28/2D is allotted to the petitioner herein vide the partition deed dated 30.04.1984.

1.2. The suit 1st item of property is Survey no. 28/2D, which is absolutely belongs to the petitioner and he was in exclusive possession of the same. The only access to the suit 1st item of property to carry on the agricultural works and to irrigate water to the coconut tress therein is the common pathway in the suit 2nd item of property. There was no other access to reach the suit 1st item of property. The said common pathway were being used by the petitioner and their father ancestrally and therefore, the petitioner is also having right to use the common pathway by way of easement by necessity.

1.3. The respondent herein had filed a suit in O.S.No. 323 of 2021 on the file of Hon'ble Additional District Court, Mettur for the relief of partition alleging falsely as no partition is effected and the said suit was also dismissed holding that the properties were already partitioned. The petitioner herein had filed a suit for the relief of permanent injunction in O.S.No. 181 of 2021 on the file of Hon'ble Sub Court, Mettur and the same was tried along with the suit in O.S.No. 323 of 2021 by assigning new number as O.S.No. 721 of 2022 and the same was also dismissed holding that the petitioner had sought for the injunction including the common property belongs to the petitioner and the respondent. The appeal filed by the respondent in A.S.No. 141 of 2025 was also dismissed confirming the judgment and decree passed by the trial court.

1.4. After filing of the above suit by the petitioner, the respondent had started to give troubles to the petitioner. An FIR in Crime no. 215/2025 on the file of Jalagandapuram Police Station was also registered as against the respondent for the incident occurred on 04.07.2025. The common pathway in the suit 2nd item of property runs in Survey no. 28/1B, 28/2F, 28/2E, 28/1A to an extent of 18x250 feet, which is about 4500 sqft.

1.5. The respondent on 01.11.2025 with an evil intention tried to construct iron fences in the common pathway and also damaged the water pipe line, which is used to irrigate the coconut trees in the suit 1st item of property. When the petitioner had questioned the same, the respondent and their henchmen had threatened the petitioner and therefore, the petitioner had also lodged a complaint before the Jalagandapuram Police Station and obtained a receipt in CSR No. 57/2025.

1.6. There was about 60 coconut trees in the suit 1st item of property. Due to the act of the respondent, the petitioner could not able to access the tress and could not able to irrigate the same using the water source in the common well and bring out the agricultural produce from the suit 1st item of property. If the coconut trees are not watered for a certain time, they all would die. Hence, the suit is filed along with this commissioner application to appoint an advocate commissioner to inspect the suit properties and to note down its physical features.

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

2.1. The respondent had specifically denied the averments put forth by the petitioner in his petition. The petitioner himself had admitted in the suit proceedings in O.S.No. 181 of 2021 filed by him that the properties in Survey no. 28/1B and 28/2D was allotted to him and the well and the house described in common portion belongs to the petitioner and the respondent. The petitioner had no where in the previous suit proceedings had described about the common pathway, which was

alleged in the plaint. The petitioner had also filed an commissioner application in the above suit in I.A.No. 03 of 2021 and the same was dismissed and the revision preferred in CRP No. 2567 of 2021 is also dismissed by Our Hon'ble Madras High Court.

2.2. The petitioner herein had filed a writ petition in W.P.No. 33022/2022 on the file of Our Hon'ble Madras High Court to direct the revenue officials to measure the properties in Survey no. 28/1B, 28/2B, 28/2D and 28/2E and as per the order passed therein, the measurements were also taken on 01.09.2025. The said writ petition is filed by the petitioner by suppressing the pendency of A.S.No. 141/2025 filed by the respondent. Since, the suit property is measured recently, there is no necessity to once again measure the same. At the time of measurement, the petitioner had fixed fences for his properties including the common well.

2.3. There is a pathway in Survey no. 28/1B, which belongs to the petitioner to an extent of 20X250 feet and the same was in existence for nearly a 50 years. The respondent is using the same to reach the common house and another common well and to reach the property of the respondent in Survey no. 28/2F. After disposal of the suit in O.S.No. 323/2021 and O.S.No. 721/2022, the petitioner along with One Tamil Shankar, Prakash, Saravanan and their henchmen had damaged the pathway using JCB. They had also damaged the water pipe line of the respondent, which is used to irrigate his properties in Survey no's. 28/1A and 28/2F. The respondent had also lodged complaint in this regard.

2.4. Since, the water pipe line was damaged by the petitioner and his henchmen, the respondent could not able to irrigate his coconut trees and cattles. Suppressing all these facts, the petitioner had filed the suit with false allegation along with this petition. The petitioner and his henchmen had assaulted the respondent and his wife and daughter on 03.07.2025 and they were admitted in the Government Hospital, Jalagandapuram. On the basis of the complaint given by the

respondent, an FIR in Crime no. 214/2025 was registered as against the petitioner and his henchmen.

2.5. In the rough sketch filed by the petitioner, the major portion in the common pathway shown in Yellow Colour therein runs in the property of the respondent. The house of the respondent and the plants and trees of the respondent situated in the common pathway shown in the Survey no. 28/1A. There is no such pathway as alleged in the suit 2nd item of property. There is already a pathway to reach the suit 1st item of property and the same was being used by the petitioner.

2.6. The petitioner is now intended to sell his property by laying plots. In order to get approval from the Government, the petitioner is in need of a wide pathway. Hence in order to achieve his goal, the petitioner had filed this suit along with this commissioner application. The suit itself is barred by principles of estoppel. The petitioner is not entitled to any relief. Hence, this petition is also liable to be dismissed.

3. No oral evidence on either side. Ex.R1 to Ex.R8 marked on the side of the respondent. No documentary evidence on the side of the petitioner.

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. Submissions:

(i) The learned counsel for the petitioner had submitted that the suit 1st item of property belongs to the petitioner by way of partition held between the petitioner and the respondent and their family members and the suit 2nd item of property is the only pathway to reach the suit 1st item of property, which is commonly belongs to the petitioner and the respondent and the respondent is causing troubles to the

petitioner in using the suit 2nd item pathway. There was 60 coconut trees in the suit 1st item of property and the petitioner even could not irrigate water to the same or to take out the agricultural produce therein, because of the act of the respondent. Hence, in order to prove the existence of the pathway, the petitioner had filed this commissioner application.

(ii) In order to repudiate the arguments advanced by the learned counsel for the petitioner, the learned counsel for the respondent had submitted that there is no such pathway as alleged by the petitioner and moreover, the petitioner had filed a writ petition before Our Hon'ble High Court and on the basis of the order passed therein, recently the petitioner had measured the properties with the help of revenue officials. Therefore, there is no necessity to once again measure the suit property. Further more, the petitioner had not at all averred about the common pathway either in the previous suit filed by him in O.S.No. 181 of 2022 or in the suit filed by the respondent in O.S.No. 323 of 2021. Hence, the averments of the petitioner is barred by principles of estoppel.

6. Both side rival submissions heard and perused the pleadings and materials on record. The original suit is filed by the petitioner/plaintiff for the relief of declaration, to declare that the petitioner is entitled to use the common pathway in the suit 2nd item of property to an extent of 18x250 feet, which is about 4500 sqft to reach the suit 1st item of property by way of easement of necessity and for the relief of mandatory injunction directing the respondent to remove the iron fences put up by him in the common pathway in suit 2nd item of property and for the relief of permanent injunction to restrain the respondent and his agents from in any way causing interference to the petitioner in using the common pathway in the suit 2nd item of property.

7. It is the contention of the petitioner that the suit 1st item of property is allotted to the petitioner vide a partition deed dated 30.04.1984 entered between

the petitioner and the respondent and their family members and the only access to reach the suit 1st item of property is the common pathway in the suit 2nd item of property and the same was being restrained by the respondent and he had tried to put up iron fences therein and he had also damaged the water pipe line through which the petitioner is irrigating the coconut trees in the suit 1st item of property. Hence, in order to establish the actual physical feature and the existence of the pathway, this petition is filed to appoint an advocate commissioner to make local investigation.

8. Admittedly, the suit 1st item of property was allotted to the petitioner in their family partition and there is also a well therein, which is commonly belongs to the petitioner and the respondent. But the respondent had totally denied the existence of the above said pathway in the suit 2nd item of property and contended that there was a pathway to an extent of 20x250 feet of the petitioner in Survey no. 28/1B and the same was being used by the petitioner for nearly 50 years. On perusal of the suit 2nd item of property, it shows that the alleged pathway claimed by the petitioner also runs through the said Survey no. 28/1B. It is also an admitted fact that the suit herein is filed by the petitioner for declaration of easementary right over the pathway claimed by him.

9. At this juncture, the question to be decided here is whether there exist a pathway as alleged by the petitioner and whether the same was obstructed by the respondent or not ?. To decide the same, in the considered opinion of this court the appointment of the Advocate Commissioner is very much necessary in order to find out the existence of the pathway and whether any block or obstruction being made in the alleged pathway and what is the nature of the pathway and the measurement of the pathway, which are all could be decided only by appointing an Advocate Commissioner.

10. In this regard, this court wants to rely on the observation of Our Hon'ble Madras High Court in the case of *Perumal vs Perumal and another in CRP (PD) No.19 of 2020*, wherein the Hon'ble Lordships had observed as follows,

7. The suit is one for declaration of easementry right over the property. The defence is one of total denial of the existence of the pathway. Therefore, it is incumbent on the plaintiff to show that the pathway is in existence. The best method to prove the existence of a particular physical feature is by seeking appointment of Commissioner.

8. The very provision namely Order XXVI Rule 9 of Code of Civil Procedure, is intended to aid the Court to make local investigation by appointing a Commissioner and find out the existence or otherwise of the disputed pathway or lane.

9. The trial Court has non-suited the petitioner on the sole ground of delay. Of course, the petitioner must have been more vigilant and should have filed the petition at an earlier stage. But for the reason of delay alone, the Court should not shut out the best evidence preventing itself from being in a position to answer the issues that arise in the suit with the aid of best evidence. After all, the petitioner by seeking appointment of an Advocate Commissioner before the trial Court is seeking to let in the best evidence. I am of the considered opinion that the trial Court was not right in dismissing the application on the ground of delay. Hence, the order of the trial Court is set aside. This Civil Revision Petition is allowed. I.A.No.482 of 2019 in O.S.No.254 of 2013 on the file of the District Munsif, Dharmapuri stands allowed. The trial Court viz., the District Munsif, Dharmapuri is directed to appoint the Advocate Commissioner, within a period of one week from the date of receipt of a copy of this order and with the direction to the Advocate Commissioner to inspect the property and file a report within a period of one month thereafter.

On perusal of the above observation of Our Hon'ble Madras High Court, it is crystal clear that if the plaintiff is claiming a right over a pathway, it is for himself to establish it's existence and for the same, the best method is by appointing an advocate commissioner, which would also be helpful to the court to decide the issue in the suit. The relied judgment is squarely applicable to the present case on hand, since both the suit herein and in the above referred case are of same nature.

11. The learned counsel of the respondent had contended that the petitioner herein had not at all whispered about the alleged pathway either in the suit filed by him in O.S.No. 181 of 2021 or in the suit filed by the respondent in O.S.No. 323 of 2022 and therefore, the plea taken by the petitioner is barred by the principles of estoppel. Admittedly, the above two suits were disposed off and the same is ended in dismissal. The suit filed by the petitioner in O.S.No. 181 of 2017 is for the relief of permanent injunction and the suit filed by the respondent in O.S.No. 323 of 2022 is for the relief of partition. The plea of pathway does not being taken in the above suits by the petitioner may or may not be fatal to the case of the petitioner and the same could only be decided in the original suit proceedings after considering the oral and documentary evidence produced by either side in this regard and the same could not be decided in this application filed for appointment of advocate commissioner. Therefore, the defence of the respondent to this effect is left open to be decided in the main suit.

12. It is the yet another contention of the learned counsel for the respondent that the petitioner had already filed an application to appoint an advocate commissioner in the previous suit filed by him in O.S.No. 181 of 2021 and the same was dismissed and the revision preferred by the petitioner as against the order of the dismissal was also dismissed by Our Hon'ble Madras High Court. Ex.R2 is the order passed by Our Hon'ble Madras High Court in C.R.P. No. 2567 of 2021. As already discussed, the said suit is filed for the relief of permanent injunction, which is evident through the Ex.R1 filed by the respondent, but this suit is filed by claiming the right of easement over a pathway. Hence, the said dismissal does not operate as a bar to appoint an advocate commissioner in this suit.

13. The learned counsel for the respondent had also contended that the petitioner herein had filed a writ petition in W.P.No. 33022/2022 on the file of Our Hon'ble Madras High Court to direct the revenue officials to measure the properties in Survey no. 28/1B, 28/2B, 28/2D and 28/2E and as per the order passed therein,

the measurements were also taken on 01.09.2025 and hence, there is no necessity to again measure the suit properties. The said contention of the respondent is not having any considerable force. Because, the petitioner herein is claiming the right of easement over a pathway and it is for himself to establish the same through admissible evidence. Moreover, the alleged pathway claiming by the petitioner is shown in the suit 2nd item of property as it runs through Survey no's. 28/1B, 28/2F, 28/2E and 28/1A. The properties alleged to be shown in suit 2nd item of property and the property alleged by the respondent to be measured by the revenue officials recently are slightly differing from each other. Further, the petitioner's contention is that the alleged pathway claiming by him runs in the property of the respondent, whereas, the alleged measurements taken through the order of Our Hon'ble Madras High Court is only with regard to the properties of the petitioner, which is evident through the plaint document no.05. Therefore, the respondent's contention to this effect is liable to be dismissed. The other exhibits relied by the respondent are all pertaining to be the complaints, CSR, FIR and photographs of the suit properties, which does not needs much consideration to this application for appointment of advocate commissioner.

14. Therefore, from the overhaul discussion, this court forms opinion that if an advocate commissioner had been appointed to inspect and measure the suit properties and filed 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. N. Manikandan is appointed as an advocate commissioner in this petition.

(i) He is directed to inspect the suit properties and the existence of the pathway therein and to note down it's physical features 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 15.12.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 11th day of December 2025.

**District Munsif,
Mettur.**

Petitioner side witnesses and exhibits: Nil

Respondent side witnesses : Nil

Respondent side exhibits:

Ex.R1	Plaint in O.S.No. 181 of 2021 filed by the petitioner	Certified Copy
Ex.R2	Order passed in CRP No. 2567 of 2021	Online Copy
Ex.R3	Complaint dated 01.05.2025 lodged by the respondent	Hand Copy
Ex.R4	Complaint dated 30.05.2025 lodged by the respondent	Hand Copy
Ex.R5	CSR copy in receipt no. 307 of 2025	Photocopy
Ex.R6	Complaint dated 07.07.2025 lodged by the respondent	Hand Copy
Ex.R7	FIR in Crime no. 214 of 2025	Online Copy
Ex.R8	Photographs showing the suit properties	Original

**District Munsif,
Mettur.**