

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

District Munsif, Mettur

Monday, this the 15th day of September 2025**I.A.No. 02 of 2024****in****O.S. No. 227 of 2024**

(CNR No. TNSA17-000304-2024)

Rajkumar

... Petitioner/Plaintiff

/versus/

1. Rathinasamy

2. Vimala

... Respondents/Defendants

This petition is heard in the presence of Mr. M.P. Senthil Kumar., M.Sc., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. I.K. Sadhasivam, M.Com., M.L., the Learned counsel for the Respondents/Defendants. Enquiry heard and having stood over for my consideration, this court delivered the following,

ORDER

Petition filed Under Order 26 Rule 9 and Section 151 of CPC to appoint an advocate commissioner to note down the physical features and drawn to scale the petition mentioned properties with the help of the Village Administrative Officer and qualified Surveyor and to file his report.

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 'A' schedule property is housing board residence and the same was belonged to One Ponnambalam son of Senniyappan, who is a retired Teacher by virtue of registered sale deed under document no. 2900 of 2023 dated 02.06.2023 and he was been in

possession of the same. Thereafter, the petitioner had purchased the suit 'A' schedule property for valid construction and on the date of sale deed, the petitioner is in possession of the suit 'A' schedule property.

1.2. The respondents are neighbours of the petitioner and they are having residential terraced house on the eastern side of the suit 'A' schedule property. In the month of June 2024, the respondents had finished the western side wall of their house and they have encroached to an extent of 1.50 feet breadth and 30 feet length of land towards north-south on the eastern side of the suit 'A' schedule property. Though the petitioner had opposed to the said encroachment, the respondents have forcibly constructed the western side wall of their house.

1.3. The petitioner had demolished his damaged house in the suit 'A' schedule property and now constructing a new terraced house therein. The respondents have disturbed his construction work by creating a boundary line dispute on the eastern side of the suit 'A' schedule property. Hence, the petitioner had measured the suit 'A' schedule property through a qualified surveyor on 30.10.2024 and the same was intimated to the respondents. But the respondents have not come forward to verify the measurements. Thereafter, again caused disturbance to the petitioner's construction.

1.4. The respondents had encroached 45 sq.ft in the suit 'A' schedule property, which is shown as suit 'B' schedule property. Though a panchayat was convened on 24.11.2024 with the respectable elder in the locality, the respondents refused to remove the encroachments and had also given a false complaint as against the petitioner and his father. Hence, this suit is filed along with this petition to appoint an advocate commissioner.

2. Brief facts in the counter filed by the 2nd respondent and adopted by the 1st respondent is as follows:

2.1. The respondents have specifically denied the averments put forth by the petitioner in his petition. The respondents house is situated on the eastern side of the suit 'A' schedule property. But the respondents had not made encroachment into the property of the petitioner. The suit property and the other properties in the same survey number belongs to the Tamilnadu Housing Board and was converted in to house plots and house building was also constructed therein. The house MI46 was allotted to One Komavalli and she was been in possession of the same. Thereafter, the sale deed was also executed in her favour after the payment of the total sale consideration. The western side wall of the MI46 and the eastern side wall of the MI45 are attached with each other.

2.2. One George had purchased the said MI46 from the said Komavalli and thereafter, One Susila had purchased the same. The said Susila had executed a settlement deed dated 30.04.2007 in favour of the 1st respondent, who is her son. Then the respondent is being in possession of the same by paying the taxes in his name to the concerned authorities. Since, the both walls are attached together, the respondents have not made any new construction. The petitioner had purchased his property only as a vacant land. In order to construct a house therein, the petitioner and his father had damaged the western side wall of the respondents to an extent of 6 inches. Since, the respondents had asked the same, the petitioner and his father had abused the respondents with obscene words and threatened them. Hence, they had lodged a complaint as against the petitioner and his father. The police had advised to redeem the western side wall of the respondents property and the petitioner had also done so.

2.3. The petitioner is now constructing his house in the plot MI45. This suit is filed by the petitioner by claiming the right over the western side wall with all sorts

of false allegation. The respondents are retired Government servants. The petitioner's father worked in the judicial department and got retired. They are threatening the respondents. 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 respondents/defendants to deliver the vacant possession of the suit 'B' schedule property to the petitioner/plaintiff and consequential relief of permanent injunction in respect of the suit 'A' schedule property.

6. It is the contention of the petitioner/plaintiff is that the suit 'A' schedule property was purchased by the petitioner/plaintiff and the respondents/defendants are neighbour of him and they are having residential terraced house on the eastern side of the suit 'A' schedule property. It is the further contention of the petitioner/plaintiff that in the month of June 2024, the respondents had finished the western side wall of their house and they have encroached to an extent of 1.50 feet breadth and 30 feet length of land towards north-south on the eastern side of the suit 'A' schedule property. The encroached portion is the suit 'B' schedule property. Now the petitioner/plaintiff is constructing a new terraced house in the suit 'A' schedule property and the respondents/defendants had created boundary line dispute on the eastern side of the suit 'A' schedule property. Per Contra, the respondents/defendants had disputed the alleged encroachment and contended that

they had not made any new construction and they only extended their house building in their vacant land and constructed a first floor on the eastern side .

7. Admittedly, the dispute between the parties is with regard to the measurement and extent of their respective properties. This court forms opinion that 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.

8. 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. P. Kanagaraj., B.L., Enrol No. 5204/2021 is appointed as an advocate commissioner in this petition.

(i) He is directed to inspect and measure the petition mentioned properties and note down the physical features and drawn to scale with the help of the Village Administrative Officer and qualified Surveyor 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 30.10.2025.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 15th day of September 2025.

Sd./-Thiru.M.Selvam,
District Munsif,
Mettur.

Petitioner side witnesses and exhibits: Nil

Respondents side witnesses and exhibits: Nil

Sd./-Thiru.M.Selvam,
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