

IN THE COURT OF DISTRICT MUNSIF, METTUR, SALEM DISTRICT

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

District Munsif, Mettur

Wednesday, this the 17th day of December 2025

I.A.No. 02 of 2024

in

O.S. No. 234 of 2024

(CNR No. TNSA17-000311-2024)

Venkatachalam

... Petitioner/Plaintiff

/versus/

1. Maadhu
2. Arumugam
3. Rajammal
4. Sekar
5. Selvakumar
6. Saroja
7. Kumar
8. Selvam

... Respondents/Defendants

This petition is heard in the presence of Mr. T.C. Sakthivel., B.A., B.L., the Learned counsel for the Petitioner/Plaintiff and Mr. J. Ferozz., B.A., B.L., the Learned counsel for the Respondents/Defendants. 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 the existing physical features and to measure the suit A and B schedule properties 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 permanent injunction. The suit properties and other properties originally belonged to the father of the petitioner namely Mari Gounder and he had three sons namely the plaintiff herein and the respondents 1 and 2 and two daughters namely Pachiammal and Ayyammal. They all had entered into a partition deed dated 02.05.2008 and the petitioner herein was allotted with the suit A schedule property as D schedule therein and the respondents 1 and 2 was allotted with B and C schedule in the partition deed.

1.2. The properties allotted to the respondents 1 and 2 are situated adjacent to the property allotted to the petitioner. The participants were given right of passing through the access in the adjacent land for reaching their respective properties and the same was also recited in the partition deed. The existence of pathway right is shown in square root symbol and the said pathway runs from south to north and then from west to east and ends in the lands of the 1st respondent. The pathway was formed commonly in portion of 12 cents of land in Old Survey no. 87/1C, New Survey no. 87/1C2B1, which is described as suit B schedule herein. Except the said pathway, there is no other pathway to reach the suit A schedule property belongs to the petitioner. Since, the respondents had tried to commit trespass in to the suit properties for widening the suit B schedule pathway by encroaching upon the suit A schedule property, the petitioner had filed the suit along with this commissioner application to inspect the suit properties.

2. Brief facts in the written statement filed by the respondents and adopted as counter in this petition is as follows:

2.1. The respondents had denied certain averments put forth by the petitioner in his petition. It is true that the suit properties and other properties were partitioned and the suit A schedule is allotted to the petitioner herein and the

respondents 1 and 2 were allotted with B and C schedule described in the partition deed. It is also true that the pathway right is shown in square root symbol and the said pathway runs from south to north and then from west to east and ends in the lands of the 1st respondent and the pathway was formed commonly in portion of 12 cents of land in Old Survey no. 87/1C, New Survey no. 87/1C2B1.

2.2. The respondents had not at all disturbed the petitioner's usage of the pathway. On 03.06.1994, the said Marigounder and his elder son, the petitioner herein had executed an unregistered sale deed to the 2nd respondent in respect of the house portion to an extent of 410 sqft in Survey no. 88 and in that survey number, the 2nd respondent is allotted with 1.01 cents of land and he had left 2 feet around his house for the purpose of maintenance and repair work of his house. In order to encroach the said 2 feet vacant portion, the petitioner is claiming that he is having the 2 feet pathway till the edge of the house and he was claiming that the 8 feet pathway comes to the edge of the 2nd respondent's house.

2.3. The petitioner alone had blocked the pathway starting from the entrance of the suit property and due to that, the respondents are not having any pathway to reach their lands. Though the respondents had lodged complaint in Mechari Police Station, they had not taken any steps. Then the petitioner had filed this vexatious suit. The respondents have no other alternative pathway to reach their lands. Hence, the suit itself 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 respective pleadings and perused the materials on record. The original suit is filed by the petitioner/plaintiff for the relief of permanent injunction restraining the respondents/defendants, their men or any one on behalf of them from in any manner disturbing the petitioner's usage of the suit B schedule pathway to reach the suit A schedule properties either by widening the pathway or by encroaching any extent of the suit A schedule properties.

6. It is the contention of the petitioner that the suit A schedule herein was allotted to him vide a family partition dated 02.05.2008 in document no. 1413/2008 and the suit B schedule is leaved as a pathway commonly to reach the suit A schedule property and the lands allotted to the respondents 1 and 2 in the said partition. But the respondents had tried to commit trespass in to the suit properties for widening the suit B schedule pathway by encroaching upon the suit A schedule property. Hence, an advocate commissioner has to be appointed to measure the suit properties.

7. It was admitted by the respondents about the allotment of the suit A schedule property to the petitioner in their family partition and the existence of the common pathway and it's recital in the partition deed. But it was disputed by the respondents that on 03.06.1994, the said Marigounder and his elder son, the petitioner herein had executed an unregistered sale deed to the 2nd respondent in respect of the house portion to an extent of 410 sqft in Survey no. 88, wherein the 2nd respondent is allotted with 1.01 cents if land and he had left 2 feet around his house for the purpose of maintenance and repair work of his house and in order to encroach the said 2 feet vacant portion, the petitioner is claiming that he is having the 2 feet pathway till the edge of the house and he was claiming that the 8 feet pathway comes to the edge of the 2nd respondent's house.

8. On perusal of the pleadings of the either side, it shows that there is no dispute between the parties with regard to the existence of the suit B schedule pathway. The only dispute between the parties is that with regard to the measurements of the alleged suit B schedule pathway. It is well settled that if there is an dispute with regard to the measurements, an advocate commissioner has to be appointed to make local investigation. 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 inspected and measured the suit properties and filed a report, it would certainly be helpful for the proper adjudication and fair determination of the suit proceedings and the dispute between the parties would also be resolved. Therefore, in the interest of justice, this court is inclined to allow this petition.

In the result, this petition is allowed. Advocate Mr. Rajagopal is appointed as an advocate commissioner in this petition.

(i) He is directed to inspect the suit properties and to note down the existing physical features and to measure the suit A and B schedule properties 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 29.01.2026.

This order is typed by me in my official laptop, corrected and pronounced by me in the open court on this 17th day of December 2025.

**District Munsif,
Mettur.**

Both side witnesses and exhibits: Nil

**District Munsif,
Mettur.**