

IN THE Court OF DISTRICT MUNSIF, BODINAYAKANUR.

PRESENT: Thiru.A.Mohamed Hashim, B.A., B.L.,
District Munsif,
Bodinayakanur.

Tuesday, the 21st day of July 2026

IA No.2/2026

in

OS No.10/2026

Palanisamy

... Petitioner / Plaintiff

Vs

Ravi

....Respondent / Defendant

This Petition came up before this Court on 14.07.2026, in the presence of Mr.S.J.Seenivasan, Learned Advocate for the Petitioner, and Mr.P.Jeyaraj, Learned Advocate for the Respondent. Upon perusing the case records and having stood over for consideration till this day, this Court hereby delivered the following.

ORDER

1. The plaintiff in the main suit has filed this petition under order 26 rule 9 of CPC seeking appointment of an advocate commissioner to inspect and measure the physical features of the suit property.

2. For ease of understanding, the parties are addressed to as per the

litigative status in the main suit.

3. The plaintiff has filed the main suit seeking the relief of permanent injunction restraining the defendant and his men from interfering with the possession of the plaintiff over the suit property, mandatory injunction directing the defendant to remove the encroachment made in the plaintiff's exclusive lane and permanent injunction restraining the defendant from putting up any further construction in the 4 feet lane claimed by the plaintiff.

4. It is the case of the plaintiff that he has left a 4 feet lane on the western side of his property for his exclusive use and that the defendant has encroached upon the said lane and put up a wall. The plaintiff has therefore filed the present petition seeking appointment of an Advocate Commissioner to inspect the property and to ascertain the alleged encroachment.

5. The defendant has filed his written statement and adopted the same as his counter. It is the case of the defendant that the plaintiff kept silent when the defendant was putting up construction and has now filed the present suit with an intention to extract money from the defendant. It is further contended that the plaintiff has no manner of right over the lane situated on the western side of the suit property and that the defendant has put up construction only within the property covered under his title deed. It is also contended that the plaintiff has falsely claimed that a lane was left for his exclusive use and therefore there is no

necessity for appointment of an Advocate Commissioner.

6. The learned counsel for the plaintiff would reiterate all the averments set out in the affidavit filed in support of the petition and the documents filed along with the plaint and would submit that the appointment of an Advocate Commissioner is necessary for proper and effective adjudication of the dispute between the parties.

7. Per contra, the learned counsel appearing for the defendant would reiterate all the averments set out in the written statement and would submit that the plaintiff is claiming right on the basis of an unregistered partition deed which is in contravention of the sale deed of the plaintiff's predecessor. He would further submit that the rough sketch filed along with the plaint is contrary to the title deed and that the properties have not been sub-divided in the revenue records. He would also submit that there is no sub-division shown in the FMB sketch and therefore appointment of an Advocate Commissioner would only be a futile exercise.

8. This Court has carefully considered the rival submissions and perused the materials available on record.

9. The point for consideration is whether the appointment of an Advocate Commissioner is necessary for the proper adjudication of the suit.

10. Admittedly, the plaintiff and the defendant are adjacent land owners. The plaintiff claims that a 4 feet lane was left on the western side of his property for his exclusive use and that the defendant has encroached upon the said lane and put up a wall. On the other hand, the defendant claims that the construction put up by him is entirely within the property covered under his title deed and that the plaintiff has no right over the alleged lane. Therefore, the dispute between the parties is not merely with respect to the title over the respective properties but also with respect to the identity, location, measurement and physical features of the properties and the alleged lane.

11. It is true that the plaintiff is claiming right on the basis of an unregistered partition deed dated 21.12.1995. The parent document relied upon by the plaintiff is the sale deed dated 09.12.1955 standing in the name of the plaintiff's father Arumuganayar. The question as to whether the plaintiff is entitled to claim any right on the basis of the said documents is a matter to be adjudicated on the basis of the oral and documentary evidence. The same by itself cannot be a ground to reject the request for appointment of an Advocate Commissioner.

12. The purpose of appointment of an Advocate Commissioner in the present case is not to decide the title of the parties or to collect evidence on behalf of either party. The Advocate Commissioner is required only to inspect

the properties, measure and identify the properties with reference to the relevant title deeds and note down the physical features, including the alleged 4 feet lane and the alleged encroachment. The report of the Advocate Commissioner would assist this Court in effectively adjudicating the dispute between the parties.

13. When both parties claim that their respective possession and construction are within the property covered under their respective title deeds and the plaintiff specifically alleges that the defendant has encroached upon the 4 feet lane claimed by him, the physical identification and measurement of the properties would be necessary for proper adjudication of the dispute. Therefore, this Court is of the view that appointment of an Advocate Commissioner would serve the purpose and would assist this Court in effectively adjudicating the dispute between the parties.

14. Accordingly, this Court is inclined to allow the petition and appoint an Advocate Commissioner to inspect the suit property and the property of the defendant, measure the same with reference to the relevant title deeds and note down the physical features, dimensions and extent of the properties and the alleged 4 feet lane and encroachment. The Advocate Commissioner shall not give any finding with respect to the title or legal rights of the parties.

15. In view of the reasons stated above this Court is inclined to allow this

petition and Advocate **Mr.S.Manikanda Prabu, (MS.No.259/2021)** has been appointed as an Advocate Commissioner to inspect and measure the suit property and the property of the defendant. The following directions are issued for due compliance by the learned Advocate Commissioner:

i) The remuneration of the learned Advocate Commissioner is fixed at Rs.10,000-. The petitioners shall pay the said amount directly to the learned Advocate Commissioner on or before 28.07.2026 and file a compliance report before this Court on the same date.

ii) The learned Advocate Commissioner shall fix a date and time for the local inspection within two weeks from 28.07.2026, and shall issue due notice to the respective learned counsel appearing for both parties, either directly or by post, well in advance of the scheduled inspection.

iii) Upon receipt of such notice, the learned counsel appearing for both the petitioners and the respondents shall furnish copies of all relevant documents, including revenue and survey records pertaining to their respective properties, to the learned Advocate Commissioner for reference during inspection.

iv) The learned Advocate Commissioner shall inspect and measure both the suit property as well as the properties of the respondents, strictly with reference to their respective title deeds and relevant revenue records. The parties

shall produce copies of their title documents and revenue records before the learned Advocate Commissioner at the time of inspection. In the event of any discrepancy between the extent, boundaries or survey particulars found in the title deeds and those reflected in the revenue records, the learned Advocate Commissioner is directed to measure the properties independently on the basis of (i) the title deeds and (ii) the revenue records, and prepare two separate sketches/plans clearly indicating the measurements, boundaries and survey numbers as per each set of documents, so as to enable this Court to effectively adjudicate the dispute.

v) As the unregistered partition deed dated 21.12.1995 is in dispute, the learned Advocate Commissioner shall measure the entire property with reference to the sale deed dated 09.12.1955 and note down the respective portions in the possession and enjoyment of the parties to the unregistered partition deed dated 21.12.1995.

vi) The learned Advocate Commissioner shall intimate the jurisdictional Village Administrative Officer and Surveyor regarding the date and time fixed for local inspection. The said officials are directed to extend their fullest cooperation to the learned Advocate Commissioner. In the event of their inability to attend the inspection on the scheduled date, they shall file a memo before this Court explaining the reasons for such inability. Failure to comply

with this order will entail appropriate action as directed by the Hon'ble Madras High Court in ***Rukmani and others vs. A.S. Chinnaiah [2002 (5) CTC 104]***.

vi) The learned Advocate Commissioner shall inspect the properties of the petitioners and respondents, measure the same, and prepare a sketch/plan clearly indicating the boundaries, its physical features and extent.

vii) The learned Advocate Commissioner shall also take geotagged photographs of the suit properties and enclose them with a certificate under Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 along with his report.

viii) The learned Advocate Commissioner shall file his report, plan and photographs before this Court on or before 27.08.2026. In case of any genuine difficulty in completing the inspection or filing the report within the said time, the learned Advocate Commissioner shall file a memo before this Court setting out the reasons for the delay.

Dictated to the steno typist, transcribed by her, corrected, and pronounced by me in open Court, this the 21st day of July 2026.

District Munsif,
Bodinayakanur.

IA No.2/2026 in OS No.10/2026 Fair / Draft Order Dated:21.07.2026.
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