

IN THE COURT OF DISTRICT MUNSIF, BODINAYAKANUR.

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

Thursday, the 06th day of November 2025

IA.No.4/2025

in

OS No.17/2025

Rengaraj

.... Petitioner / Plaintiff

Vs

1. Sekar

2. Selvarathi

3. Pandiyammal

... Respondents/ Defendants

These petition came up before this court on 29.10.2025, in the presence of Mr.M.A.Ramakrishnan, Learned Advocate for the Petitioners, and in the presence of Mr.P.John Mohandass, Learned Advocate for the Respondent. Upon perusing the case records and having stood over for consideration till this day, this court hereby delivers the following.

ORDER

1. This petition has been filed by the plaintiff under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to measure and note down the

physical features of the suit property.

2. The petitioner herein is the plaintiff in the main suit. The petitioner has filed the main suit for declaration to declare that the 2nd item of suit property is common pathway for the plaintiff and the defendants and for consequential permanent injunction restraining the defendants from interfering in the enjoyment of plaintiff in the 2nd item of suit property. For noting down the physical features of the property, appointment of an Advocate commissioner is necessary in this case.

3. The respondents have submitted that they have no objection in allowing this petition.

4. Heard either side. Perused the materials of records.

5. In the present case, the plaintiff asserts that the 2nd item of the suit property is being used as a common pathway by both the plaintiff and the defendants for reaching their respective properties. On the other hand, the defendants contend that there exists no such common pathway and that the 2nd item of the suit property absolutely belongs to them and they are in exclusive possession and enjoyment of the same. Thus, the existence, identity and user of the alleged common pathway are seriously disputed questions, which can be effectively ascertained only by local inspection.

6. In cases of this nature, where the controversy pertains to the physical

features and the very existence of a pathway, a local investigation through an Advocate Commissioner would facilitate the Court in understanding the topography, boundaries and actual position of the properties on ground, with reference to the pleadings and documents produced by the parties. The appointment of an Advocate Commissioner in such circumstances is not for the purpose of collecting evidence on behalf of any party but to assist the Court in arriving at a just conclusion on the factual controversy involved

7. In view of the foregoing discussion, this Court is inclined to allow the present petition. Accordingly, ***Ms. E. Janaki*** (M.S.No.3870/2023) is hereby appointed as Advocate Commissioner in this suit to measure and note down the physical features of the suit property, particularly the 2nd item, and to submit a detailed report. 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.7,500/-. The petitioner shall pay the said amount directly to the learned Advocate Commissioner on or before 14.11.2025 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 14.11.2025, 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 plaintiff and the defendants 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) Since the defendants claim absolute ownership over the 2nd item of the suit property, the learned counsel for the defendants shall file a memo before the learned Advocate Commissioner specifying the description and extent of the defendants' property, together with supporting title and revenue documents. The learned Advocate Commissioner shall inspect the properties of the defendants also.

v) 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 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 property, measure the same, and prepare a sketch/plan clearly indicating the boundaries of the suit properties as well as the properties belonging to the defendants.

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 her report.

viii) The learned Advocate Commissioner shall file her report, plan and photographs before this Court on or before 15.12.2025. 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 typist, transcribed by her, corrected, and pronounced by me in open Court, this the 06th day of November 2025.

District Munsif,
Bodinayakanur.