

**IN THE COURT OF THE II ADDITIONAL DISTRICT & SESSIONS JUDGE,
THANJAVUR.**

**Present :Thiru.P.Nagarajan, M.A., M.L.,
II Additional District and Sessions Judge, Thanjavur.**

Monday the 29th day of June 2026
(Thiruvalluvar Andu 2057 -Aani Matham 15th day)

I.A. No.3/2026 in O.S. No.159/2020

1. Kasthuri
2. Kalyani

.....Petitioner/Plaintiff

/vs/

1) Ramachandran
2) Manikandan
3) Kalyanasundram
4) Thillainayagam
5) Ravichandran
6) Sambantham

.....Respondents/Defendants

This petition having come up for final hearing before me on 27.06.2026 in the presence of Thiru.**K. Parthiban** Advocate for the Petitioners/Plaintiffs and **Thiru.K. Prasanna, Advocate for the respondents/defendants 1 to 4 and** notice served to respondents 5 and 6 but called absent set exparte and upon hearing the arguments of petitioner side, upon perusal of the entire material records pertaining to the case and the matter having stood over for consideration till this date, this court delivered the following

ORDER

1) The petitioner/plaintiff filed this petition under order 26 Rule 13 of CPC to pass an order appointing an Advocate/Commissioner to divide the suit properties with help of Surveyor and Village Administrative Officer and to allot a 2/6 share in

favour of the petitioners and to allot the remaining share in favour of the respondents for the suit properties by metes and bounds by considering the bad and good soil and directing the Commissioner to file a detailed report for the division and pass a final decree in favour of the petitioners.

2) The Summary of the Affidavit is as follows:

The petitioner herein and the 1st plaintiff in the original suit. The plaintiffs have filed a suit for partition against the respondents claiming a 2/6 share of the suit properties. After full trial this court passed a preliminary decree on 04.11.2025 in favour of the petitioners. The respondents have not preferred any appeal against this decree and judgment and so the decree and judgment passed by this court is final. In these circumstances it is just and necessary to appoint an Advocate commissioner to partition the suit properties by metes and bounds in accordance with the terms of the preliminary decree and to allot out 2/6 share in the suit properties ultimately leading to a final decree based on the Commissioner Report. Unless this application is allowed we will be put to irreparable loss and much hardship. Hence pray to allow this petition.

3) Gist of the counter filed by the 3rd respondent adopted by the 1, 2 and 4 respondents:

The application filed by the petitioners is not sustainable both in law and on facts and the same is liable to be dismissed in limine. These respondents preferred an appeal before the Hon'ble Madurai Bench of Madras High court in A.S.(MD)

No.243/2026 and the same is pending. Hence the decree and judgment passed by this court in O.S.No.159/2020 has not reached its finality. Likewise the description of property in this petition is also misleading with the decree. Therefore prays to dismiss the application with costs.

4) Point for consideration:

Whether the petitioners are entitled to the relief sought for?

5) Point:

The learned counsel for petitioners argued that the suit for partition. The suit is filed by the plaintiff against the defendants. After full trial this court passed a preliminary decree on 04.11.2025 in favour of the petitioners. The respondents have not preferred any appeal against this decree and judgment and so the decree and judgment passed by this court is final. Unless this application is allowed we will be put to irreparable loss and much hardship. Hence pray to allow this petition. But in contra the respondents 1 to 4 argued that these respondents preferred an appeal before the Hon'ble Madurai Bench of Madras High court in A.S.(MD) No.243/2026 and the same is pending. Hence pray to dismiss this petition.

6) Considering the both side argument and perusal of records, this court views that the suit for partition. Already preliminary decree was passed. The petitioners states that the respondent have not preferred any appeal. But the respondents stated that they preferred an appeal before the Hon'ble Madurai Bench of Madras High court. At this stage the suit is filed for the relief of partition, hence the appointment

of Advocate Commissioner in this suit is necessary one. If this petition is allowed the respondents will not suffer any way. Hence in the interest of justice this court decides that the petition is to be allowed. Hence, it is ordered that this petition is allowed and Advocate Mr. Chelladurai, **M.S.No.201/2018** is appointed as an Advocate Commissioner in this suit and his fee is fixed at Rs.10,000/- and the petitioners are directed to pay the fees to him directly. The advocate commissioner is directed to inspect the suit properties along with qualified surveyor, after giving notice to all the parties and their counsels and the Advocate/Commissioner is directed to submit his report along with the sketch on or before 30.07.2026. Call this petition on **31.07.2026**.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in the open court, this the **29th day of June 2026**.

**II Additional District and Sessions Judge,
Thanjavur.**

Petitioners and respondents side documents and evidence : Nil

**II Additional District and Sessions Judge,
Thanjavur.**

<u>ORDER in</u> <u>I.A. No.3/2026 in</u> <u>O.S. No.159/2020</u> <u>DATED: 29.04.2026</u>
