

**IN THE COURT OF DISTRICT MUNSIF, THIRUVAIYARU**

Present: Mr.P.RAMESH B.L.,  
District Munsif, Thiruvaiyaru

Dated this is 01<sup>th</sup> Day of July 2025, Tuesday

I.A. No.257 of 2024 in O.S. No.70 of 2016

D. Vengatesan ... Petitioner/ 3<sup>rd</sup> Defendant

Vs

K. Mahalingam ... 1st Respondent/ Plaintiff

**Appearance:**

For Petitioner/ 3<sup>rd</sup> Defendant : Mr.Lalitha  
For R1 Respondent/ Defendant : Mr.Udhayakumar  
For R2, R4 to R6 Defendants : Mr.Maruthaiya

**ORDER**

1. The Petition is filed under order 26 rule 9 of Code of Civil Procedure to appointment of Advocate Commissioner to make local inspection of the suit property and to note whether the suit property situate in Serumakkanallur Village or Perumakkanallur Village and to note the demarcation boundary line.

2. Brief fact of the petition is the main suit was filed for perpetual injunction against the defendant. The plaintiff stated that two items of suit property, i) In R.S. No. 135/1 with an extend of hectare 1.43.0, ii) R.S. No. 136/2 with an extend of hectare 1.43.5. The 3<sup>rd</sup> defendant never interfered with the possession and enjoyment of lands in R.S. No. 136/2. Further Neither the plaintiff nor his father Karuppaiya was in possession and enjoyment of the suit property in R.S. No. 135/1. The 1<sup>st</sup> item of suit property in R.S. No. 135/1 situate in Serumakkanallur Village.

The said Serumakkanallur Village is an adjacent Village near Perumakkanallur Village. The plaintiff has filed the suit for Agriculture land in Perumakkanallur

Village. The possession and enjoyment of the 1<sup>st</sup> item of suit property is continuously with the father of 3<sup>rd</sup> defendant and after his demise with the 3<sup>rd</sup> defendant. Further the D3 have erected in borewell for irrigation of the land in R.S. No. 122/1 in Perumakkanallur Village in the year 1990. The 3<sup>rd</sup> defendant erected underground irrigation pipeline with five inch PVC pipes with a total length of 1500 feet from his agricultural borewell in R.S. No. 122/1 to all his other Agricultural lands including the 1<sup>st</sup> item of the suit property R.S.No. 135/1 with entire extend of hectare 1.43.0 including the 22 cent in western portion of the same survey number in the year 2009.

Further it is absolutely just and necessary that an Advocate Commissioner be appointed to make local inspection of the suit property and to note whether the suit property situate in Serumakkanallur Village nor Perumakkanallur Village and to note the physical features thereof and to filed detailed report with plan. Therefore it is prayed to allowe the petition.

3. Brief fact of the counter is the plaintiff does not admit that the 3<sup>rd</sup> defendant father has been open, exclusive and continious possession and enjoyment of the entire extend of 1.43 ares in R.S. No. 135/1 in Perumakkanallur Village without any interruption by anyone including plaintiff and after his demise the 3<sup>rd</sup> defendant enjoying the suit property as absolute owner of the same and he is cultivating the total extend of 1.43 till today without interruption by anybody including plaintiff as all false.

Further the 3<sup>rd</sup> defendant does not admit that there is a pipeling irrigation made by the petitioner in R.S.No.135/1 with an extend of 1.43 ares which from his very peculiar nature can only on the spot and refused to allowed the petitioner where it is most needed may perpetuate gross injustice and prevent petitioner from having clinching evidence is proving the said fact as all are false. The petitioner has to prove the existence of pipeline either through oral evidence or through documentary evidence and it can't be proved through the report of the commissioner. The Commissioner can't be appointed to fined out the possession of the parties. This suit

being permanent injunction where the plaintiff has to prove his possession on the date of filing of the suit through documentary evidence and it is not the duty of the commissioner to find out the possession of the parties in the suit. Therefore it is prayed to dismiss the petition.

4. Heard both sides, materials perused. The point for consideration is whether the petition would be allowed? or not?

5. The main case has been filed for the relief of perpetual injunction. The main case has been taken on file on 25.04.2016. The issues were framed on 04.08.2023. The PW1 chief examined on 01.03.2024 and during the case pending for cross of PW1 this petition is filed for appointment of Advocate Commissioner to note down the physical features of the suit property.

6. Admittedly two items of suit properties mentioned in the suit. As per plaint both the suit properties are situated in the Perumakkanallur Village. But the 3<sup>rd</sup> defendant contention is the unregistered lease agreement dated 15.05.1984 alleged by the plaintiff as document No.1 in the suit is purely a forged and concocted and created with a mala fide idea to grab the suit property R.S. No.135/1.

7. In Ex.A1 the 1<sup>st</sup> item of suit property Survey No.135/1 is situated in Serumakkanallur Village. But the plaintiff mentioned the said 1<sup>st</sup> item of suit property in survey No. 135/1 is situated in Perumakkanallur Village. The 3<sup>rd</sup> defendant rightly raised the question that whether the 1<sup>st</sup> item of suit property situated in Serumakkanallur Village or Perumakkanallur Village.

8. It is not a complete bar for a Court to appoint an Advocate Commissioner in a suit for bare injunction. However, such an appointment must be only in cases where it is necessary for localising the property, when there is a dispute regarding boundaries or there is an attempt made to alter the physical features of the property etc. In this case the 1<sup>st</sup> item of suit property locality is questionable.

9. Considering the facts and circumstance of the case the petition is allowed in the interest of justice.

This order is directly dictated to typist and typed by her and corrected and pronounced by me in open court on 01.07.2025.

District Munsif, Thiruvaiyaru