

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, VALLIYOOR

Present: Mithuna.A.Kaiser, Additional District Munsif, Valliyoor
Saturday, On the day of 12th day of July 2025.

திருவள்ளூர் ஆண்டு 2056, குரோதி வருடம் ஆனி மாதம் 28-ம் நாள் சனிக்கிழமை

I.A.No.5/2025

In

O.S.No.19/2017

1. P. Thangadurai Nadar

2. Muthuraja

3. Premkumar

.... petitioners/plaintiffs

-Vs-

1. Pastorate Chariman, CSI Church, Rosemiyapuram

2. Tirunelveli CSI Diocesan

Trust Association through its Secretary

3. The Tahsildar, Radhapuram Taluk

4. Government of Tamilnadu through

the District Collector, Tirunelveli

... Respondents/Defendants

This petition came before this court on 02.07.2025 for final hearing in the presence of Thiru.K.Palanivel, M.A., L.L.B., Learned counsel for the petitioners, Thiru.J.Xavier Charles, M.A., B.L., Learned counsel for the 1st respondent, Thiru.E.Seenivasn, B.Com., B.L., Learned counsel for the 2nd respondent & Government Pleader for the 3rd & 4th respondent and upon hearing both sides, perusing the case records, and having stood over the consideration till this day, this court hereby delivers the following:

ORDER

The petitioners had filed this petition under Order XXVI Rule 9 of Civil procedure code, seeking to appoint advocate commissioner to inspect and measure the suit property with help of Taluk surveyor.

1. As per the petitioners/plaintiffs, the suit is for the relief of declaration and consequential injunction. The plaintiff schedule property is common pathway used to reach Panagudi village through SriRagunathapuram village by the plaintiffs and for village public. The said common pathway is used by the public for last 100 years without any interference. As per revenue records, the plaintiff schedule property is denoted as common pathway.

2. The suit scheduled property is East-West common pathway. TTDA School in Survey No.1069/10 is situated south of the East-West common pathway and CSI Church of 1st defendant under the authority of Tirunelveli Zonal CSI Diocesan, 2nd defendant is situated North of the East-West common pathway.

3. On 02.04.2015, the 1st respondent / 1st defendant attempt to build a compound wall across the common pathway to make a play ground for TTDA School and the same was stopped by the plaintiffs and Rosemiyapuram village public. Later on 05.11.2016, the 1st respondent/1st defendant again attempted to build a foundation of compound wall and the same was stopped by the plaintiffs and Rosemiyapuram

village public. Regarding this, the complaint was lodged before Panagudi Police Station, as no action was take against the complaint, the petitioners/plaintiffs gave a representation to Cheranmahadevi Sub Collector on 25.11.2016 and again no action was taken against the said representation.

4. On 18.01.2017 the defendant and their Hench men expressed that the common pathway will be taken as School ground by using temporary mud bunds in the suit schedule property. The action of the 1st respondent /defendant is illegal and encroaching the common pathway will cause irreparable loss and injuries to the common public. Hence the petition is filed to appoint advocate commissioner to inspect the suit schedule property with help of Taluk surveyor.

5. In turn 1st respondent/ 1st defendant denied the averments in petition as false and frivolous one. There is no such East-West common pathway, the suit schedule property belongs to 2nd respondent / 2nd defendant. OS.No.53/2004 was filed before this court by the 2nd defendant against 4th defendant, in which advocate commissioner was appointed and commissioner report and plan were submitted regardingly. After full trial the suit was decided infavour of the 2nd respondent/2nd defendant as the suit property belongs to 2nd defendant. The 4th defendant filed no appeal against the decided OS.No.53/2004. Meanwhile, 2nd defendant filed execution petition No.37/2015 against the 4th defendant and such property was delivered to 2nd defendant on 22.09.2017 as per order of honorable court.

6. The petitioner's prayer to appoint advocate commissioner to inspect and measure property of 2nd defendant is not maintainable, whereas the suit property was under possession and enjoyment of 2nd defendant. Hence, prays for dismissal of petition with cost.

7. The 2nd respondent / 2nd defendant countered that the suit is barred by res-judicata. The plaintiff had filed this petition with intention to create chaos in the village. Moreover the petitioners/plaintiffs had filed a IA.No.120/2017 seeking to appoint advocate commissioner and the same was dismissed for default on 23.02.2018. The original suit was filed in representative capacity, in contra the petition was filed in individual capacity as per the small cause title of the petition and thus prays for the dismissal of the petition.

8. The 3rd and 4th respondents stated in the countered that the petition is not maintainable in eye of Law. The petitioner's prayer to appoint advocate commissioner to inspect and measure the suit schedule property, is not a common pathway but as per the revenue records, the survey No.1069/23 belongs to one Ramasamy and same was not a poromboke land. As the above said Ramasamy or his legal heirs were not party to the suit, hence, the petition to inspect and measure his property is not maintainable, if so, the permission of the said individual is inevitable to enter in to his property. Hence, the petition be dismissed with cost.

POINT FOR CONSIDERATION:

Whether the petition under Order XXVI Rule 9 and Section 151 CPC has to be allowed or not?

1. Heard both sides, records perused. The petitioners/plaintiffs had filed this suit in a representative capacity for the relief of Declaration of suit schedule property as Common pathway and for consequential injunction.

2. Petitioners had stated in the petition that the suit schedule property is a East-West Common pathway used by the village public to move from SriRagunathapuram to Panagudi Village. The suit schedule property was classified as Common pathway as per Government records. The TTDA School is situated in Sy No.1069/10, which lies south to East-West pathway and a CSI Church under the authority of 2nd defendant diocese is situated to north of the said East-West pathway. Now the 1st respondent/defendant tries to build a compound wall in the common pathway making a play ground for the school.

3. Now, the Petitioners/ plaintiffs had filed this petition at the stage of Defendant side further evidence, Seeking to appoint advocate commissioner to inspect the property and to measure the property with the help of surveyor and file a detail report with plans.

4. On the other hand, the 1 and 2 respondents countered that, the suit schedule property is not even a pathway. As per the 1st and 2nd respondents, the 2nd respondent had instituted a suit against the 4th respondent/ 4th defendant numbered as O.S. No.53/2004 on the file of this court, which was already decided on 30/03/2010 regarding the same suit schedule property. The said suit was decided in favour of the 2nd respondent and subsequently the suit schedule property was delivered to the 2nd respondent on 22.09.2017 by execution proceedings.

5. On other hand, the 3rd and 4th respondent stated that the said suit schedule property is not a government paromboke land and it belongs to individual named Ramasamy as per the patta. On perusal of the records, it is found that as per the revenue records the suit schedule property of survey number 1069/23 belongs to one individual named Ramasamy and the said land is not a government paromboke land, hence a advocate commissioner cannot be appointed to inspect the property of stranger to the suit.

6. On perusal of records, it is found that the description of suit schedule property is East-West common pathway of extent of 5 Ares equal to 12.35 cents situated in Sy.No.1069/23, South Valliyoor Village, Radhapuram Taluk, Tirunelveli District. It also stated by the petitioners/plaintiffs that the suit property is situated north to that of TTDA School and south to that of CSI Church, 1st defendant. Thus the placing of the suit property is not disputed by both the parties. The prayer of the

petitioner is that advocate commissioner be appointed to inspect and measure the suit property, Whereas the extent of the suit property is not disputed at all. Hence this court is of view that the advocate commissioner to inspect the property and to measure the suit property is not necessary in the suit.

7. Thus, on consideration of above discussion, the petitioners/plaintiffs unable to point out the necessity for appointment of advocate commissioner. Furthermore, as stated above, there is no reference to any dispute regarding the identity of the suit property or the measurement. It is a well settled principle of law that ‘ the court cannot appoint an advocate commissioner in order to secure evidence which will support either of the parties. The parties to the suit are bound to establish their respective case through their oral and documentry evidence and they cannot seek the assistance of the court to appoint a commisisoner for the collection of evidence or to establish their case.’

8. Moreover, on perusal of records, as pointed out by the 1st respondent/ 1st defendant, it is found that, the petitioners/plaintiffs had filed an I.A.No.120/2017 seeking to appoint an advocate commisioner to inspect and to measure the extent of the property. The said I.A No.120/2017 was dismissed for default on 23.12.2018 as no representation for petitioner side. Thus it is evident that the petitioners/plaintiffs had already filed a interlocutory application on same prayer without effectively conducting the petition and now had filed this petition with same prayer with an

intention to drag on the proceedings. In addition to this, it was pointed out that the original suit was contested in the nature of representative capacity of the village public, whereas the petition was filed in the individual capacity to appoint an advocate commissioner, which is not maintainable in law.

9. Based on the above discussion and findings, this court inclines to the view that the petitioners/plaintiffs fail to state a sufficient reason for the necessity to appoint an advocate commissioner. Hence, the petition deserves to be dismissed.

In the result the petition is dismissed. No cost.

This Order dictated to the Typist, directly typed in computer by him, corrected and pronounced by me in open Court, on 12th day of July 2025.

Additional District Munsif,
Valliyoar.

Witnesses examined on the side of Petitioner and Respondents: Nil

List of Documents on the side of the Petitioner and Respondents: Nil

Additional District Munsif,
Valliyoar.

Additional District Munsif Court,
Valliyoor

I.A.No.5/2025

in

O.S.No.19/2017

Draft/Fair Order

Dated: 12.07.2025