

IN THE COURT OF THE DISTRICT MUNSIF, ARNI.

PRESENT: Miss. D.V.Koperundevi,B.com.,L.L.B.,(Hons)

DISTRICT MUNSIF,

DISTRICT MUNSIF COURT, ARNI.

Wednesday the 2nd day of July 2025.

I.A.No.4/2024

in

O.S. No. 03/2017.

1. D. Saravanan
2. D. Selvakumar

... Petitioners/Plaintiffs

/Vs/

1. J.Ravi
2. Gajalakshmi
3. R.Varadhan
4. D.Govindaraj
5. D.Sampath

...Respondents/Defendants

This petition came up before me for final hearing on 17.06.2025 in the presence of Advocate Thiru. R.Saravanan, for the Petitioners/Plaintiffs and Advocate Thiru.M.Sivakumar, for the Respondents/Defendants, and upon hearing the both sides enquiry and perusing the material records of this petition and having stood over for consideration till this day, this court delivers the following: -

ORDER

The petitioner filed this petition under Order XXVI Rule 9 and Sec. 151 of Code Civil Procedure 1908.

I. The gist of the averments in the petition filed by the 2nd petitioner:

In the affidavit, The Second Petitioner, who is also the Second Plaintiff in the original suit, has filed this affidavit in connection with the suit property, which he claims along with his elder brother, the First Respondent. The Petitioner has instituted the present suit seeking a declaration and permanent injunction to restrain the Respondents from interfering with his peaceful possession and enjoyment of the suit property, and has also sought costs. The property originally belonged to the Petitioner's father, Deventhiran, who held a valid patta and possessed the land until a registered settlement deed dated 02.12.2016 transferred the property jointly to the Petitioner and his brother. Since then, both have been in continuous possession and enjoyment. The Respondents, however, dispute the measurements and description of the suit property, claiming that five distinct plots exist in the area, facing a public lane on the southern side, each measuring 33 feet north-south and 15 feet east-west, and further allege that the 5th plot is occupied by the Second Respondent's son. They also assert that patta has not been issued for the suit property and reference various previous owners of adjacent plots. The Petitioner strongly denies these claims, maintaining that no such plots exist within the suit property and that the dimensions and location described in the plaint are accurate, as reflected in the patta and the registered settlement deed. He asserts that both he and his brother have been in rightful possession in accordance with those details. Given the dispute over measurements and location, the Petitioner submits that the appointment of an Advocate Commissioner is essential to inspect and measure the suit property with the assistance of the Village Administrative Officer and Surveyor, and to file a report along with a rough sketch of the property. He contends that this will minimize reliance on oral evidence and enable the Court to reach a fair. He therefore respectfully prays that this Hon'ble Court may graciously appoint an Advocate Commissioner to carry out the necessary inspection and submit a detailed report and sketch of the property in question.

II. Gist of averments in the counter:

The application filed by the Petitioner seeking appointment of an Advocate Commissioner to inspect the suit property with the assistance of a Surveyor and VAO is neither legally tenable nor factually justified. The Respondent denies all the averments in the affidavit except those specifically admitted and calls upon the Petitioner to strictly prove each one. The Respondent submits that in this case, the Plaintiff's witnesses, PW1 and PW2, were already examined in chief and cross-examined, and the Plaintiff's evidence was closed as of 20.06.2023. Subsequently, the 2nd Defendant was also examined in chief on the Defendant's side. After completion of these key stages of evidence, the Petitioner has now filed this application, which is clearly vexatious and intended only to delay and drag the proceedings. The purpose of appointing a Commissioner is generally to avoid extensive oral evidence, but in this case, oral evidence has already been concluded. Hence, there is no merit or bonafide in the present application. Therefore, it is respectfully prayed that this Hon'ble Court may dismiss the application with costs in favor of the Respondents and pass such further orders as may be deemed fit and proper under the circumstances.

III. Points:

1. Whether the petition filed under Order 26 Rule 9 and Sec.151 of CPC is allowed?

IV. Points for consideration:

Heard on both sides. Records have been perused.

1. Upon perusal of the records, it is seen that the Petitioner has filed the suit seeking a declaration and consequential injunction against the Respondents, and through this petition now seeks the appointment of an Advocate Commissioner to inspect and measure the suit property with the assistance of the VAO and Surveyor, and to file a report along with a rough plan.
2. It is noted that the case is currently posted for DW1's evidence. While it is true that the purpose of appointing an Advocate Commissioner is generally to reduce oral evidence and aid in the effective adjudication of the matter, **Conversely**, in the present case, the Respondent has rightly

objected on the ground that the Plaintiff's side evidence has already been completed and closed, and the matter is now at the stage of Defendant's evidence, with DW1 already examined in chief. At this belated stage, the Petitioner has filed this application, which appears to be a tactic to unnecessarily delay and prolong the proceedings.

3. **While scanning the ORDER XXVI-Rule 9 of CPC. Commissions to make local investigations.** *In any suit in which the Court deems a local investigation to be requisite or proper for elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:*

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

4. I relied upon the judgment of the learned Single Judge of Karnataga High Court reported in AIR 1982 Kar 233

(B.Jagannath Vs. N.C.Narayanappa and another), wherein the learned Single Judge had observed that a Commissioner's report would be required only if there is dispute is related to the sketch filed along with the plaint, then, for clarification, the Court can, under Order 9 Rule 26 C.P.C. find out the actual lay of the land. **It was also mentioned that a Commissioner can be appointed for better appreciation of evidence already on record.**

5. It must be emphasized that this line of reasoning should not be construed as imposing any constraint on the Court's discretion to appoint an Advocate Commissioner, nor as suggesting that such an appointment is permissible only after the conclusion of evidence. The Court is fully vested with the authority to appoint a

Commissioner, whenever the circumstances so warrant. Such an appointment may be founded solely on the pleadings be it upon a perusal of the plaint or the written statement or based on evidence already adduced. **Furthermore, the Court may, where appropriate, exercise its inherent powers to make such an appointment suo motu.**

6. In this regard, I would like to point out that the Hon'ble Supreme Court had stated that **'if it is found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.'**
7. Based on the cumulative effect of the discussion, there is no bar in the provision to appoint the advocate commissioner after the petitioner's/ plaintiff's side evidence closes. It is just and necessary to elucidate the matter of the case. Hence, in the interest of justice and fair trial, this petition deserves to be allowed.

V. Result:

In fine, the petition under Order 26 Rule 9 is allowed and ^{No} costs.

Dictated to Steno Typist, and computerized by her directly, corrected and pronounced by me in the open Court, on the 2nd day of July 2025.

P.V. Koperunderi
27/7/25
District Munsif
Arni

List of documents & witnesses : NIL

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