

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.

Saturday, the 25th day of October 2025.

I.A. No. 02/2023

in

O.S. No. 28/2023.

1.Sujatha

2.Bhuvaneshwari

3.Anandhi

... Petitioners/Plaintiffs

/Vs/

1.The Commissioner, Panchayat Union, Arni East

2.The Commissioner (Village Panchayat), Panchayat Union, Arni East

3.The Panchayat President, Irumbedu Panchayat, Irumbedu

4.Prem Kumar

...Respondents/Defendants

This petition came up before me for final hearing on 13.10.2025 in the presence of Thiru. M.Sivakumaran, Advocate for the Petitioners/Plaintiffs, and Thiru. G.Aristatil, Government Pleader, Advocate for the 1st to 3rd Respondents/1st to 3rd Defendants, and the 4th Respondent/4th Defendant set exparte in the main suit on 05.04.2023, and upon hearing 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 26 Rule 9 and Section 151 CPC.

I. The averments in the petition:

1. In the affidavit, the 1st Petitioner/1st Plaintiff in the above petition. The 1st petitioner filing this affidavit on behalf of himself and the 2nd and 3rd Petitioners. The 1st petitioner, along with the 2nd and 3rd Petitioners, has filed this case seeking a permanent injunction and a mandatory injunction against the Respondents.
2. This case was listed for trial on 06.11.2021. When the petitioners filed the case, the Respondents were making arrangements to construct a building on the scheduled property. Now, while the case is pending, the construction of the building is almost complete. The Respondents have stated in their written statement that the suit area to the south of the scheduled property is not related to the street. Furthermore, the Respondents have denied in their reply that they broke the pipeline leading to the 1st petitioner's house. The Court may decide all these matters by appointing an advocate commissioner to inspect the suit properties with the help of a surveyor, measure the places, and provide a physical features, it is essential that a report with a plan be submitted to the Court. If such a report is submitted, it will be very convenient for the Hon'ble Court to reach a correct decision, and oral testimonies will also be very convenient, and only a minimum amount will be required.

3. It is essential to appoint an Advocate Commissioner to know the gaps between the 1st petitioner's house and the building currently built by the respondents, and all the damages caused to the 1st petitioner by it. Otherwise, the 1st petitioner will suffer great difficulty and loss. The appointment of an Advocate Commissioner will not cause any harm to the respondents. It is essential to appoint an Advocate Commissioner for justice and proper investigation.
4. Therefore, it is essential and just that the Hon'ble Court orders the appointment of an Advocate Commissioner in this case to inspect the scheduled properties of the suit with the help of a surveyor, measure them, and submit a report with a plan specifying the status of the buildings and other places there.

II. The averments in the counter filed by the 1st respondent to 3rd respondent:

1. The facts admitted by the defendants in the case filed by the plaintiffs, except the other facts, are false. The plaintiffs are responsible for proving the facts of the case.
2. The case filed by the plaintiffs against defendants 1 to 3 is against a quasi-government entity. A notice must be sent to the said defendants before filing a case against them, and the case must be filed after 80 days. As the plaintiffs' case has been filed without mentioning the 80 CPC notice, this case is not legally maintainable and should be dismissed.
3. The plaintiffs claim to have acquired the property through a sale deed, but they have not submitted a flat approval for the property. It will be clear from the said flat approval what street access the property has. The

plaintiffs' case states that all rights in 'A' schedule property are also in the 'B' schedule property for the defendants.

4. The plaintiffs' case states that the plaintiffs have a right of way in the 'B' schedule property, but the case seeks a permanent injunction against the defendants from doing any construction in the 'B' schedule property. The property for which the plaintiffs are seeking an injunction belongs to the government. The plaintiffs have no right to seek an injunction on the said property. The plaintiffs' case is the government welfare scheme and to impose a ban on the construction of a fair-price shop for public use.
5. The plaintiffs have not denied that the suit 'B' schedule property belongs to the government. The correct court fee has not been assessed for the 'B' relief. Furthermore, the plaintiffs have no right to seek 'C' relief. In fact, no documents or evidence have been filed by the plaintiffs to substantiate the relief of laying a pipe as sought in the 'C' relief.
6. There is no provision in the law for the plaintiffs to obtain any relief against the government respondents 1 to 3 in the suit property. No documents have been filed to assess the value of the 'B' schedule property. Furthermore, the suit 'A' schedule property is not within the jurisdiction of this court.
7. The plaintiffs' case is without merit. They have filed this case by stating false facts. It is not acceptable that merely because the sale deed of the plaintiffs mentions the street in the southern part of the property, the plaintiffs have a right to a passage on that street. If there is such a right to a passage, it should have been mentioned while filing the case. The

plaintiffs' act of filing this case to prevent the construction of a fair-price shop for public use is against the public interest.

8. In view of the above reasons, it is prayed on behalf of the respondents that the plaintiffs' case be dismissed with costs and that the judgment and decree be passed accordingly.

III. Points:

1. Whether the petition under Order 26 Rule 9 and Section 151 of CPC to be allowed or not?

IV. Points for Consideration:

Heard on both sides. Records have been perused.

1. The petitioners/plaintiffs have filed the present petition seeking appointment of an Advocate Commissioner to inspect the suit 'A' and 'B' schedule properties with the help of a surveyor, to measure the same and to note down the physical features, the extent of construction made by the respondents, the distance between the petitioners' house and the newly constructed building, and the alleged damage caused to the petitioners' water pipeline and passage, and to file a report with a plan before this Court.
2. According to the petitioners, at the time of filing of the suit, the respondents were making arrangements to put up construction over the suit 'B' schedule property, which the petitioners claim as a common passage and pipeline route for access to their house in the 'A' schedule property. It is contended that during the pendency of the case, the construction has almost been completed, and that the respondents have denied in their written statement that they encroached upon or caused any

damage to the petitioners' property or pipeline. It is therefore contended that a local inspection by an Advocate Commissioner, assisted by a surveyor, is necessary to ascertain the true factual position on ground, and such inspection would aid the Court in adjudicating the matter effectively.

3. The respondents/defendants have filed their counter opposing the petition. They have contended that the suit itself is not maintainable in the absence of a notice under Section 80 of CPC since the defendants are quasi-government entities; that the plaintiffs have no right over the 'B' schedule property which belongs to the Government; that the plaintiffs cannot seek injunction against construction of a fair-price shop meant for public welfare; and that the plaintiffs' request for appointment of a commissioner is only an attempt to delay the proceedings. They further contend that the plaintiffs have no legally recognized right of way through the 'B' schedule property, and hence, the appointment of a commissioner would be unnecessary and irrelevant.
4. Upon considering the rival contentions, it is evident that the petitioners have raised serious disputes with regard to (i) the location and measurement of the suit schedule properties, (ii) the existence of a passage claimed by them in the 'B' schedule property, (iii) the alleged damage caused to their water pipeline, and (iv) the proximity of the respondents' construction to the petitioners' house. The respondents, on the other hand, have denied these allegations. Thus, there exist disputed questions of fact regarding the identity, extent, and physical features of the suit properties.

5. It is well settled that the purpose of appointing an Advocate Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure is to assist the Court in elucidating any matter in dispute, especially in cases where local investigation or measurement of property is necessary for just decision of the case. The report of the Commissioner is only an aid to the Court and does not by itself constitute evidence; the parties will have opportunity to object and cross-examine the Commissioner during trial.
6. The Hon'ble Madras High Court in *Dhanalakshmi v. Saravanan* [(2010) 1 MLJ 944] has held that “when there is a dispute regarding the location, boundaries, or encroachment of property, the appointment of an Advocate Commissioner for local investigation is proper and necessary for effective adjudication.” Similarly, in *Srinivasan v. Kuppusamy* [2013 (3) CTC 711], it was held that “the object of appointing an Advocate Commissioner is not to collect evidence for either party, but to assist the Court in arriving at the truth of the physical situation.”
7. Further, in *K.K. Velusamy v. N. Palanisamy* [(2011) 11 SCC 275], the Hon'ble Supreme Court observed that under Section 151 CPC, the Court possesses inherent powers to make orders necessary for the ends of justice, including appointment of a commissioner when required for proper elucidation of facts.
8. Applying these principles to the present case, this Court finds that the dispute pertains primarily to the **physical features of the property, the existence and extent of the passage, the alleged damage to the water pipeline, and the nature of the respondents' construction.** These are

matters which cannot be satisfactorily decided merely on oral or documentary evidence without a proper inspection and measurement of the suit properties. A local investigation by an Advocate Commissioner, assisted by a qualified surveyor, would enable this Court to visualize the factual situation and decide the real issues in controversy.

9. As regards the respondents' objection on the maintainability of the suit for want of Section 80 CPC notice, such an issue can be decided independently on merits at the time of trial, and it cannot be a ground to reject this petition for appointment of a commissioner. The appointment of a commissioner at this stage will not cause any prejudice to the respondents, as they will have the opportunity to participate in the inspection, raise objections to the report, and cross-examine the commissioner, if required. On the other hand, refusal to appoint a commissioner may lead to hardship and difficulty in determining the actual factual position regarding the disputed property.
10. Therefore, this Court is of the considered opinion that the appointment of an Advocate Commissioner is necessary in the interest of justice and for the proper adjudication of the dispute between the parties.

V. Result:

In the result, the petition filed by the petitioners/plaintiffs under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure is allowed.

The Court hereby appoints Advocate, **Mr.N.Jagadesh, MS No. 2386/2011** as **Advocate Commissioner** to inspect the suit 'A' and 'B' schedule properties with the assistance of a Surveyor, to measure the

same as per the title documents and revenue records, to note down all physical features including the construction, and to file a detailed report with plan before this Court on or before 13.11.2025.

The Advocate Commissioner shall issue notice to both parties in advance before conducting the inspection. The remuneration of the Advocate Commissioner is fixed at Rs.7,000/-, to be initially borne by the petitioners.

Dictated to Steno Typist, and computerized by her directly, corrected and pronounced by me in the open Court, on the 25th day of October 2025.

**District Munsif
Arni**

List of documents & witnesses: N I L

**District Munsif
Arni**