

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.

Tuesday, the 4th day of August 2026.

I.A. No. 01/2026

in

O.S. No. 19/2024.

M.Chakkarai

... Petitioner/Plaintiff

/Vs/

1.S.Boobalan

2.A.Amirtham

3.V.Rajeshwari

4.G.Tulasi

5.M.Saraswathi

6.V.Latchumanan

7.P.Uma

8.The Village Administrative Officer,

Kizhnagar Village, Arni Taluk

9.The Firka Surveyor, Arni

10. Head Surveyor, Arni

11. The Tahsildar, Arni

...Respondents/Defendants

This petition came up before me for final hearing on 21.07.2026, in the presence of Thiru. R.Saravanan, Advocate for the Petitioner/Plaintiff, and Thiru. B.S.Ramesh, Advocate for the 1st Respondent/1st Defendant, and Thiru. A.Babu, Advocate for the 2nd, 4th to 7th Respondents/ 2nd, 4th to 7th Defendant,and

Thiru. M.Shankaran, Government Pleader, Advocate for the 8th to 11th Respondents/8th to 11th Defendants, 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 XXVI Rule 9 and Section 151 CPC.

I. The gist of the averments in the petition:

1. In the affidavit, the Petitioner / Plaintiff in the above-numbered Original Suit.
2. The petitioner have filed the main suit praying for a declaration of title over the suit property, and consequently for a permanent injunction and possession, and for legal costs against the Respondents / Defendants.
3. The petitioner pray that the averments made by him in the accompanying petition may be read as part and parcel of this affidavit.
4. In Tiruvannamalai District, Arni Taluk, Keezhnagar Village, the total extent of Nanja Survey No. 248/4 is 2.95 acres. Out of this, the property measuring 0.82 acres of Nanja Survey No. 248/4 was acquired by his paternal grandmother, Panchalai Ammal, through a registered sale deed dated 13.04.1959, along with a registered well deed. Subsequently, the aforementioned Survey No. was sub-divided, and on 02.05.1966, under Registered Partition Deed No. 637/1966, the property was partitioned among Munisamy Sayan, Vadivelu Sayan, and Edaikargal, and fell to the share of the aforementioned grandmother Panchalai Ammal, as a registered property with well rights. Out of this 0.82 acres of land, a

portion measuring 0.71 cents of land, bounded on the South: Our Nanjai land and the Nanjai land of Yadava Veerasami Pillai; North: The Nanjai lands of Andi @ Muniya Gounder and Katpadi Muthu Naicker, and the irrigation channel of Jakiriya Sahib; East: Nanjai land of Thanamottai Gounder; West: Nanjai land of Raghava Annamalai Pillai.

5. Subsequently, on 05.05.1966, under Document No. 636/1966 registered in the office of the Sub-Registrar, Kannamangalam, Mr. Veerasami Naicker, son of Moorthy Naicker and the father of Respondents 2 to 7, purchased an extent of 1.42 acres from Abdul Hameed Sahib and Habibullah Sahib by a registered Sale Deed. The boundaries mentioned in the said Sale Deed were identical to those contained in the Sale Deed under which the petitioner mother, Mrs. Panchalai Ammal, had purchased the property, namely: South: Our Nanjai land and the Nanjai land of Yadava Veerasami Pillai; North: The Nanjai lands of Andi @ Muniya Gounder and Katpadi Muthu Naicker, and the irrigation cannal of Jakiriya Sahib; East: Nanjai land of Thanamottai Gounder; West: Nanjai land of Raghava Annamalai Pillai.
6. The Sale Deed relating to the extent of 0.71 acre purchased by his mother, Panchalai Ammal, was executed on 02.05.1966 and was registered on 07.05.1966. Similarly, the Sale Deed relating to the extent of 1.42 acres purchased by the said Veerasami Naicker was executed on 05.05.1966 and was also registered on 07.05.1966. Thus, although both documents were registered on the same date, the Sale Deed in favour of his mother, Panchalai Ammal, was executed prior to the Sale Deed in favour of Veerasami Naicker. Thereafter, the Sale Deed executed in

favour of Veerasami Naicker was drafted by adopting and reproducing the very same boundary descriptions contained in the earlier Sale Deed under which the petitioner my mother, Panchalai Ammal, had purchased the property.

7. Consequently, the property measuring 0.82 acres and 0.71 acres, totaling 1.53 acres, acquired by the petitioner mother Panchalai Ammal through the settlement deed, has been continuously enjoyed by her, and the land revenue taxes have been duly paid. The property was assigned Patta No. 656, and she remained in peaceful possession and enjoyment of the same throughout her lifetime.
8. Following the demise of the petitioner mother Panchalai Ammal, the petitioner and his brother Velu, being her legal heirs, have been in joint possession and enjoyment of the property. Subsequently, the petitioner brother Velu and his legal heirs executed a registered sale deed in favour of the petitioner in the year 1998, conveying his share in the extent of 0.82 acre. Further, the extent of 0.71 acre was allotted to the petitioner through an oral partition. Accordingly, the petitioner have been in possession and enjoyment of 1.53 acres.
9. Out of the scheduled property, an extent of 0.71 Acres has been exclusively allotted to the petitioner and the petitioner have been in absolute possession and enjoyment of the same. The revenue authorities have properly mutated the revenue records in respect of the scheduled property and issued a Joint Patta. Following the demise of the said individual, legal heirs 2 to 7 of the 1st Respondent, along with others, joined together and executed a Registered Sale Deed in favor of the 1st

Respondent on 08.11.2021, registered as Document No. 2411/2021 at the Sub-Registrar Office, Kannamangalam, thereby conveying an extent of 1.16 Acres out of the total extent in Survey No. 248/4C. In the said document, it has been stated that the property is covered under joint patta no.1984. It is evident that the said joint patta had been obtained approximately one month prior to the execution of the sale deed.

10. Under these circumstances, in December 2021, the 1st Respondent, with the assistance of their henchmen, attempted to illegally trespass into the property belonging to the petitioner, which measures approximately 0.07 Acres out of the total extent, and which is under his absolute possession and enjoyment, with an unlawful intent to encroach upon the same. The 1st Respondent has been continuously engaged in illegal activities. Consequently, the petitioner lodged a formal complaint before the Kannamangalam Police Station regarding the unlawful actions of the 1st Respondent. However, the 1st Respondent continues to act in complete defiance of the law and persists in executing unlawful activities against the scheduled property.
11. The petitioner has submitted a complaint regarding this matter to the District Collector of Tiruvannamalai, the Revenue Divisional Officer (RDO) of Tiruvannamalai, and the District Superintendent of Police. During the inquiry, the 1st Respondent was informed that the dispute was of a civil nature, and that the parties should seek appropriate relief before the civil court. The respondents 2 to 7 supporting the illegal acts of the 1st respondent.

12. At the time of effecting the sub-division of Nanjai Survey No. 248/4, it was the duty of Respondents 8 to 11, who are officials of the Revenue Department, to issue notice to and inform the owners of the adjoining lands in accordance with the prescribed procedure. However, Respondents 8 to 11 carried out the sub-division of the said survey field without issuing any notice or furnishing any information to the petitioner. While effecting the said sub-division, the portion over which the petitioner have lawful ownership and possession, namely the petition schedule property, was also included, and Joint Patta No. 1984 was issued in the names of Respondents 2 to 7. It is not known as to how the said Joint Patta was issued without conducting any enquiry whatsoever. Further, the said Patta is illegal, and liable to be challenged. Therefore, Respondents 8 to 11 have also been impleaded as parties in the main suit.
13. Therefore, it is prayed that this Hon'ble Court may be pleased to pass an order declaring the absolute right of the Petitioners over the suit property, and recovery of possession of the suit property and costs of the suit.
14. Therefore, as the 1st Respondent has encroached upon the petition property belonging to the petitioner, it is essential to pass an order appointing an Advocate Commissioner to inspect the said suit property and to inspect the properties contained in the sale deeds dated 13.04.1959 and 02.05.1966 executed in favor of the petitioner mother concerning Survey No. 248/4 of the petition property, the sale deed dated 05.05.1966 executed in favor of Veerasamy Naicker, the father of Respondents 2 to 7, and the sale deed dated 08.11.2021 belonging to the 1st Respondent;

and to measure and inspect the same with the assistance of the Village Administrative Officer and a Surveyor, and to file a map along with a report detailing its physical features. Certified copies of the aforementioned documents are filed herewith. The petitioner have already stated that at the time of filing this suit, a petition would be filed seeking the appointment of an Advocate Commissioner to inspect and file a report.

15. Thereby, there is a possibility that oral evidence in the main suit may be reduced. Furthermore, the report of the Advocate Commissioner will be appropriate and conducive for the Court to arrive at a just decision.

16. If the said Advocate Commissioner is not appointed, the petitioner will not be able to prove the true facts before this Hon'ble Court. Consequently, the petitioner will be subjected to irreparable loss, hardship, and injury which cannot be compensated.

17. Therefore, it is prayed that this Hon'ble Court may be pleased to allow the petition, appoint an Advocate Commissioner to measure the petition property and the properties mentioned in the sale deeds dated 13.04.1959, 02.05.1966, 05.05.1966, and 08.11.2021 with the assistance of the Village Administrative Officer and a Surveyor to inspect and submit a report along with a map showing its physical features.

II. The averments in the counter filed by the 6th respondent, and the same was adopted by the 1st to 5th, and 7th respondents:

1. The petition filed by the petitioner is not legally sustainable and not valid under justice.
2. The facts stated in the petition affidavit are completely untrue.

3. It is requested that the written statement filed by this respondent in the above main suit be treated as part of this counter.
4. The petitioner filed the above main suit in the year 2024 seeking declaration and possession. In the said suit, after Defendants 1, 6 filed their written statements and the matter came up for trial, this petition was filed with a malicious intent to prevent the trial of the suit from proceeding, and it is not acceptable under the law.
5. Furthermore, while filing the above main suit, the petitioner did not file an application for a Commissioner appointment, but has filed this application now with the intent to create evidence. Therefore, this petition is not maintainable by law.
6. Moreover, when the plaintiff files a suit seeking declaration, they must prove their case through their own documents and oral evidence; filing a Commissioner application to create evidence instead is legally unacceptable.
7. Furthermore, regarding the property detailed in the suit schedule under Survey No. 248/4, the total area is 2.95 cents. Out of this, the plaintiff's mother obtained a sale deed for 1.53 cents, and the remaining 1.42 cents was purchased by Veerasamy through a sale deed. Further, the plaintiff's land was measured, and a separate Patta No. 656 has been issued. The remaining 1.42 cents of land has undergone a Patta transfer in the names of the legal heirs of Veerasamy.
8. The 1st respondent, by demonstrating a correct undivided share, purchased 1.16 cents of land from the legal heirs of the said Veerasamy via a sale deed on 08.04.2021, describing the property with the correct

boundaries. Thereafter, he obtained mutation of the patta in his own name. The remaining extent of 0.21 acres remains in the possession and enjoyment of the legal heirs of Veerasami Naicker and remains under their enjoyment.

9. It is submitted that the contention of petitioner/Plaintiff that they purchased 1.53 cents of land in the year 2021 and that the petitioner/Plaintiff has been in enjoyment of 0.07 cents of land by encroaching upon it is entirely false. In truth, the petitioner/Plaintiff has no right or enjoyment over the schedule property, and the Plaint filed by the petitioner/Plaintiff seeking declaration of title is not sustainable under law.
10. Furthermore, it is only if the petitioner proves that they are in possession and enjoyment of the 0.07 cents of land comprised in Survey No. 248/4, that the petitioner can seek a relief of injunction. However, the petitioner has failed to measure and identify the property with reference to the title deeds produced by them. Therefore, the Plaint filed by the petitioner seeking the relief of permanent injunction is not sustainable under law.
11. Furthermore, the Plaint filed by the petitioner is not sustainable under law as it has been preferred without any correlation between the suit property and the documents relied upon by the petitioner.
12. The Plaint has been filed with a malicious intent, therefore liable to be dismissed. It is prayed that this Hon'ble Court may be pleased to dismiss the petition filed by the petitioner with exemplary costs, and thus render justice.

III. The counsel for the 8th to 11th respondents endorsed as "No counter".

IV. Points:

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

V. Points for Consideration:

Heard on both sides. Records have been perused.

1. The petitioner has filed the present application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to inspect the suit property, measure the same with the assistance of the Village Administrative Officer and a qualified Surveyor, compare the physical features with the title deeds dated 13.04.1959, 02.05.1966, 05.05.1966 and 08.11.2021, and file a report along with a sketch.
2. The suit is one for declaration of title, recovery of possession, permanent injunction and consequential reliefs. The petitioner's case is that the suit property originally belonged to his mother, Panchalai Ammal, under the sale deed dated 13.04.1959 and the subsequent partition deed dated 02.05.1966. According to him, after the demise of his mother, he became entitled to the property, and subsequently acquired the remaining share from his brother. It is further alleged that the respondents have obtained a joint patta without notice, executed a sale deed dated 08.11.2021 in respect of a portion of the property, and encroached upon an extent of 0.07 acres belonging to the petitioner. Hence, the petitioner contends that local inspection and measurement through an Advocate Commissioner are necessary to identify the suit property, ascertain the alleged encroachment, and assist the Court in effectively adjudicating the dispute.

3. Per contra, the respondents oppose the petition contending that the application has been filed only after commencement of trial with the intention of delaying the proceedings and creating evidence. According to them, the petitioner has to establish his title and possession through documentary and oral evidence and cannot seek appointment of an Advocate Commissioner for collecting evidence. They further contend that the plaintiff's property already stands covered under a separate patta, whereas the respondents' property has been validly purchased and mutated in their names. Therefore, according to them, the petition is liable to be dismissed.
4. It is well settled that the object of appointment of an Advocate Commissioner under Order XXVI Rule 9 CPC is not to enable a party to collect evidence in support of its case, but to enable the Court to obtain clarification regarding the physical features, identity, location and measurement of the property whenever such local investigation is necessary for effectively adjudicating the issues involved in the suit. Where the dispute relates to identification of immovable property, boundary dispute or alleged encroachment, appointment of an Advocate Commissioner would assist the Court in appreciating the factual position on the ground and would not amount to collection of evidence.
5. In the present case, the pleadings disclose a serious dispute regarding the identity, extent and location of the suit property. The petitioner alleges encroachment over 0.07 acres and challenges the correctness of the subsequent subdivision and joint patta issued by the revenue authorities. The respondents, on the other hand, deny the alleged encroachment and

contend that the petitioner has no right over the disputed portion. Thus, the controversy substantially revolves around the identification, measurement and physical location of the respective properties with reference to the title documents.

6. This Court is of the view that a local inspection by an Advocate Commissioner, with the assistance of the competent Surveyor and Village Administrative Officer, would facilitate proper identification of the suit property and the neighbouring properties with reference to the relevant title deeds and revenue records. Such inspection would only furnish the Court with factual data regarding the physical features and measurements and would not dispense with the burden cast upon the parties to establish their respective title and possession by adducing independent oral and documentary evidence. The Commissioner's report is only a piece of evidence and its evidentiary value will be considered during trial.
7. The objection of the respondents that the petition amounts to collection of evidence is not acceptable in the facts of the present case, since the primary purpose of the commission is identification and measurement of the disputed property. The apprehension that the petitioner seeks to create evidence can adequately be addressed by limiting the scope of the commission strictly to noting the physical features, measurements and identity of the property, leaving the question of title to be decided independently on the basis of evidence adduced by the parties.

8. Accordingly, this Court is satisfied that local investigation is necessary for proper and effective adjudication of the issues involved in the suit. Hence, the petition deserves to be allowed.

VI. Result:

In the result, the petition is **allowed**.

The Court hereby appoints Advocate, **Tmt.S.Priyadarshini, M.S.No.5298/2021**, as **Advocate Commissioner** to inspect the suit property with the assistance of a Village Administrative Officer and Surveyor, note down the physical features of the schedule mentioned property and measure the same and file a detailed report along with a rough sketch/plan within the time stipulated by this Court and measure the same and to file a detailed report with plan before this Court on or before 02.09.2026.

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 petitioner.

Dictated to Steno Typist, and computerized by her directly, corrected and pronounced by me in the open Court, on the 4th day of August 2026.

**District Munsif
Arni**

List of documents & witnesses: N I L

**District Munsif
Arni**