

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF, CHEYYAR

THIRUVANNAMALAI DISTRICT

Present :- **Tmt. K. Naleeni., M.L.,**
Principal District Munsif, Cheyyar,
Thiruvannamalai.

Monday, the 27th day of October, 2025

I.A.No.02/2024 in O.S.No. 110/2024

1. Munusamy
2. Valli

... Petitioners/Plaintiffs

V.

1. Present administrative trustee,
Arulmigu Kanniyamman Thirukovil,
Giridharanpettai, Cheyyar.
2. Present administrative Trustee,
Arulmigu Selvavinayagar Thirukovil,
Giridharanpettai, Cheyyar.
3. Sridhar,
Present trustee of Kanniyamman Temple.
4. Minicipal Commissioner,
Thiruvathipuram Municipality,
Cheyyar.
5. Village Administrative Officer,
Thiruvathipuram,
Cheyyar.
6. The District Collector,
Thiruvannamalai.

... Respondents/Defendants

This petition is coming before me on 25.09.2025 for final hearing in the presence of Tmt. Deepa Venkatesan, Learned Advocate for the Petitioners and Thiru.G.Gunasekaran, Learned Advocate for the R1 to R3 Respondents and R4 to R6 called absent and set exparte and upon hearing both sides and after careful perusal of the entire case records and having stood over for consideration till this day, this Court delivered the following:

ORDER

This Petition has been filed by the Petitioner under Order XXVI Rule 9 of Code of Civil Procedure, 1908 to appoint an Advocate Commissioner along with the assistance of the Surveyor in order to ascertain under which village and survey number the said properties are situated and to submit a detailed report with a plan.

2. BRIEF AVERMENTS OF THE PETITION AS FOLLOWS:

- i. The petitioner states that he is the petitioner and the plaintiff in the above suit and that the 2nd petitioner is his wife and that they have been living and enjoying the suit property by having constructed a small shed house for about sixty (60) years.
- ii. The petitioner further states that the suit property (A-schedule property) is situated in Cheyyar Taluk, in Parudhipuram under Thiruvattipuram Municipality and according to the present town survey records, the suit property falls in Ward No. B, Block No. 16, Municipal Plot Nos. 70 and 71 and that by the old revenue records, in the area shown as Grama natham survey Nos. 16 and 17, there exists a small shed of about 1200 square feet and an vacant plot which constitute the petitioners house which is the A-schedule suit property. The suit property is located in

Bungalow Street, Old door no 28A and new number 70. The A-schedule property is adjacent to the B-schedule property .

- iii. The petitioner further states that both of the said suit items are originally grama natham lands and in the said land, the A-schedule suit property was enjoyed by the petitioner's father Vedhapuri during his lifetime and after his death, the petitioners have been peacefully and continuously enjoying possession and occupation of the suit property with their family without any interruption.
- iv. The petitioner states that while they have been enjoying the suit property, the petitioner and their ancestors together with the villagers have for more than about fifty (50) years constructed and been conducting worship at a temple called "Arulmigu Kanniamman Temple" which is adjacent/contiguous to the A-schedule suit property. Likewise, near that Kanniamman temple there is also the Arulmigu Selva Vinayagar temple. The petitioner further states that the petitioners and village residents have continued to worship at these two temples till date and that these two temples are not under the control of the Hindu Religious and Charitable Endowments Department and there are no separate properties held for those two temples. The petitioner further states that, in the revenue documents those two temples are shown as being situated within Grama Natham survey Nos. 16 and 17 at about 2000 square feet, but the correct survey number is not certain.
- v. The petitioner further states that until now, defendants Nos. 4 to 6 have not raised any objection to the petitioner's possession and enjoyment of the A-schedule suit property. Further, in the survey numbers connected with the A and B schedule properties, about thousand families live together with the petitioners and that they have been residing and enjoying those lands.

- vi. The petitioner further states that he defendants Nos. 1 and 2, who are connected with the temple on the A-schedule property, together with defendant No. 3 and some persons associated with him, are attempting, for their private gain and personal benefit, to wrongfully evict the petitioner from the A-schedule suit property by resorting to unlawful acts and collusive false contentions.
- vii. The petitioner further states that though the defendants Nos. 1 and 2's temple has been existing for about fifty (50) years, defendant No. 3 is now trying to demolish that temple and rebuild it afresh without obtaining any consent and in order to demolish the temple, defendant no. 3 has been providing false information and attempting including incorrect survey numbers and other details about the petitioner's possession, to his superiors in order to obtain orders to dispossess the petitioner unlawfully.
- viii. The petitioner further states that on 15.11.2024 defendant No. 3 attempted to alienate a portion of the A-schedule suit property and that she successfully prevented that attempt and lodged a complaint at the police station. However, defendant No. 3, together with some persons associated with him, motivated by self-gain and to collect money for constructing the temple illegally, has used money and influence to ensure that no action is taken on the petitioner's complaint. The petitioner further states that if 3rd defendant/ respondent succeeds in taking over the A-schedule suit property, the petitioner will have no other house or alternative place to live and that the 3rd respondent is well aware of the same.
- ix. The petitioner further states that 3rd defendant has no other means of livelihood and that the 1st and 2nd defendants, who manage the temple on the A-schedule property, engage in anti-social activities such as keeping a donation box, collecting money and exploiting the temple. The petitioner further states that as she would report such activities to the authorities at

relevant time, the defendants are using this in attempting to evict the petitioner.

- x. The petitioner further states that as the Respondent's temple and the petitioner's house are close and adjacent to one another, the 3rd defendant continues to attempt to dispossess the petitioner from the A-schedule suit property.
- xi. The petitioner further states that 3rd defendant may at any time again enter the A-schedule suit property and dispossess the petitioner and therefore the petitioner has no option but to approach the civil court and file this suit.
- xii. The petitioner further states that it is the 6th Respondent who has control over the Grama Natham Lands and the 1st and the 2nd Respondents have no power or authority to evict the petitioners from the suit property.
- xiii. The petitioner further states that the survey numbers of the petitioner's A and B schedule properties and the temple of defendants Nos. 1 and 2 are different. The suit land is shown in village survey Nos. 16 and 17 while the temple of defendants Nos. 1 and 2 is shown in village survey No. 15. The municipal authorities have also issued a TSLR . As the survey numbers are different, the petitioner states that it is necessary and essential that appointment of Advocate Commissioner is necessary along with the Municipal Surveyor to measure the suit properties.
- xiv. The petitioner further states that as the 3rd defendant is threatening to dispossess the petitioner, she has been constrained to file the suit for permanent injunction restraining them from interfering with the peaceful possession and demolishing and reconstruction of the suit properties.
- xv. The petitioner states that in order to ascertain under which village and survey number the A and B schedule suit properties are situated and also with respect to the second item of the suit properties, the third defendant

claims that the 'A' schedule property is situated in Survey No. 1 and to determine the truth of the matter, the petitioner prays for the appointment of Advocate Commissioner along with the help of the Surveyor. Hence, the petition.

3. BRIEF AVERMENTS OF THE COUNTER AS FOLLOWS:

- i.** The Respondent adopts the written statement as Counter to this petition. The Respondent vehemently denies the facts alleged by the plaintiffs in the suit and the petition.
- ii.** The defendant specifically denies the statement in the plaint that the plaintiffs have been residing in the suit property for the past 60 years. In reality, there is no building structure as claimed by the plaintiffs in the schedule property. The plaintiffs have falsely mentioned such details in the plaint. The property belonging to *Arulmigu Kanni Amman Temple* is situated in the old survey No. 17. The defendant admits that the plaintiffs had temporarily erected a small thatched hut along the southern side of the temple's surrounding path adjoining bungalow street and were residing there. The defendant is the present *Dharmakartha* and the managing trustee of both *Arulmigu Kanni Amman Temple* and *Arulmigu Selva Vinayagar Temple*, which are under his administrative control.
- iii.** The Respondent further states that since the plaintiffs had encroached upon the *A Schedule property* without obtaining permission from the HR&CE Department, several notices were issued to them through the HR&CE Department and the temple administration, requesting them to vacate the encroachment as the land was required for temple purposes. However, as the plaintiffs refused to comply, the Board of Trustees of *Arulmigu Selva Vinayagar Temple* passed a resolution dated 14.03.2024 to remove the encroachment and restore possession of the land to *Arulmigu Kanni Amman Temple*.

- iv. The Respondent further states that based on the said resolution, the plaintiffs were issued a formal notice dated 29.03.2024 by the defendant/respondent herein, the Chairman of the Board of Trustees, directing them to remove the encroachment, failing which proceedings would be initiated under Section 78 of the HR&CE Act. Based on this, the HR&CE Department's Inspector, on 22.05.2024, requested the Assistant Commissioner to take necessary steps under the Act to remove the encroachment. Acting on those directions, the Joint Commissioner, HR&CE Department, Thiruvannamalai, issued a summons dated 15.07.2024 directing the first and third plaintiffs to appear for an enquiry. After conducting the enquiry under Section 78(4) of the HR&CE Act, the Joint Commissioner passed an order in M.P. No. 140/2024 on 28.08.2024, directing removal of the encroachment. Based on the said order, the plaintiffs were given an opportunity to vacate the property voluntarily, but since they refused, the encroachment was lawfully removed under the supervision of the Assistant Commissioner, HR&CE Department, in the presence of Revenue and Police authorities on 02.09.2024. The vacant possession of the property was handed over to *Arulmigu Kanni Amman Temple*. Thereafter, the HR&CE Department granted permission to renovate the temple, and the renovation and restoration work is currently being carried out under the supervision of the defendant.
- v. The Respondent further contends that the plaintiffs have falsely stated that they are still residing in the suit property, while in fact, the property is under the possession and control of *Arulmigu Kanni Amman Temple*, which is managed by the defendant. The temple renovation is being lawfully carried out under the HR&CE Department's directions. The plaintiffs have suppressed these facts and have filed the present suit with ulterior motives.

- vi.** The petitioner further states that the suit property situated in Survey No. 17/1 belongs to *Arulmigu Kanni Amman Temple*, which is under the administration of the defendant. The temple itself is located in Survey No. 15. The third defendant does not hold any permanent position and cannot take administrative actions independently. The plaintiffs are well aware of this fact. The post of *Dharmakartha* is a position conferred upon a duly elected member by the HR&CE Department. The defendant was properly appointed as such. The defendant has not acted with any personal motive or malice against the plaintiffs. The action to remove the encroachment was taken solely for the welfare of the temple and its devotees, considering that the temple is situated in a congested area where large gatherings during festivals pose safety concerns. Hence, the property was retrieved lawfully for temple purposes and not out of personal interest.
- vii.** The Respondent further states that before initiating the eviction, the authorities conducted proper land measurement and identification of the property, confirming that it belongs to *Arulmigu Kanni Amman Temple*. And that after giving sufficient opportunity to the encroachers, they were evicted lawfully. The first plaintiff has already been granted a free house site patta by the Revenue Department in Painganur village. The plaintiffs also possess other properties, which they have deliberately concealed from this Court.
- viii.** The defendant vehemently denies the allegations made in the plaint that the third defendant has no occupation and that he collects money through temple donation boxes (*undiyal*). The defendant states that in truth, the third defendant is the proprietor of *Star Traders*, an edible oil manufacturing business. The allegation that he collects temple funds for personal use is completely false. The donation boxes in *Arulmigu Kanni*

Amman Temple and *Arulmigu Selva Vinayagar Temple* are managed and accounted for by the HR&CE Department.

- ix.** The Respondent further contends that the plaintiffs have also made baseless allegations against third parties who are not necessary parties to the suit, which is legally untenable. The allegations made in paragraph 9 of the plaint are completely false and unsustainable. The plaintiffs have suppressed the fact that an order in M.P. No. 140/2024 dated 28.08.2024 was already passed against them under the HR&CE Act. Their claim that on 15.11.2024 the third defendant attempted to trespass into the property is false and contrary to the records.
- x.** The Respondent further contends that as the plaintiffs were lawfully evicted from the property on 02.09.2024, the allegation that the third defendant attempted to trespass into the suit property on 15.11.2024 is false and contradictory to the established facts. The present suit and petition is therefore legally untenable and liable to be dismissed. The renovation work of *Arulmigu Kanni Amman Temple* is being carried out under proper authorization from the HR&CE Department, and photographs and video evidence of the ongoing temple renovation are filed along with this counter. The plaintiffs' claim that the suit property belongs to the Government as *Grama Natham* under the control of the sixth defendant is completely false.
- xi.** The defendant contends that the suit property belongs to *Arulmigu Selva Vinayagar Temple* and its sub-temple *Arulmigu Kanni Amman Temple*. The plaintiffs have nowhere claimed ownership of the property in the plaint. Hence, the suit filed by the plaintiffs is not maintainable in law and liable to be dismissed. The statements made regarding survey numbers in the plaint are completely incorrect. The defendant has strong objection to the appointment of an Advocate Commissioner to measure

the suit property. The defendant has no personal motive or self-interest in the suit property. The plaintiffs' allegation that the defendant is acting for personal gain is false, frivolous, and malafide. Since the HR&CE Department's Joint Commissioner has already passed an order regarding the same property, the present suit filed by suppressing those facts is barred by the principle of *res judicata* and is therefore not maintainable in law and prays to dismiss the suit and the petition.

4. POINT FOR CONSIDERATION:

The sole point to be considered by this Court is whether the present petition can be allowed or not?

5. ORAL AND DOCUMENTARY EVIDENCE:

No oral or documentary evidence was adduced on both the sides.

6. DETERMINATION:

Heard both sides and carefully perused the records.

- i) The petitioners are the plaintiffs in the above suit. The petitioners/plaintiffs have filed the suit seeking for permanent injunction against the defendants and have filed the present petition seeking appointment of Advocate commissioner along with the assistance of Surveyor and to submit a detailed report with a plan.
- ii) The petitioners states that they are in lawful possession of the suit property and that they and their family have been residing in and enjoying the A-schedule property at Parudhipuram, Cheyyar Taluk, for about sixty years by constructing a small sheet house, and that the said property, shown in old Grama Natham Survey Nos. 16 and 17, lies adjacent to the Arulmigu Kanniamman and Selva Vinayagar temples,

which the petitioners and villagers have been maintaining for over fifty years without HR&CE control. They allege that defendants 1 and 2, connected with the temple, along with defendant 3, are unlawfully attempting to evict them and demolish the temple for reconstruction by misrepresenting facts and survey details, and that despite police complaints, no action was taken. The petitioners seek protection from dispossession and the appointment of an Advocate Commissioner with a municipal surveyor to measure the properties to determine the correct survey numbers.

- iii) On the other hand, the Respondents 1-3 deny the petitioners' claims, asserting that the plaintiffs are encroachers on temple land belonging to Arulmigu Kanni Amman Temple in Survey No. 17/1, managed by the HR&CE Department. They state that after due notices and enquiry under Section 78 of the HR&CE Act, an eviction order (M.P. No. 140/2024) was passed, and the encroachment was lawfully removed on 02.09.2024, after which temple renovation began with HR&CE approval. The defendants contend that the plaintiffs have suppressed these facts, falsely claim possession, and that the suit is barred by res judicata and legally untenable, hence liable to be dismissed.
- iv) This Petition has been filed by the Petitioner under Order XXVI Rule 9 of Code of Civil Procedure, 1908 to appoint an Advocate Commissioner along with the assistance of the Surveyor in order to ascertain under which village and survey number the suit properties are situated and to submit a detailed report with a plan.
- v) According to Order XXVI Rule 9 and 10 of the Code of Civil Procedure, 1908, an Advocate Commissioner can be appointed by the Court in matters necessary for local investigation.

Rule 9 under Order 26 Provides as follows:

9. Commissions to make local investigations.—In any suit in which the Court deems a local investigation to be requisite or proper for the *purpose of 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.

- vi)** The Hon'ble High Court of Madras in various decisions, including in **Meenakshi v. Vennila & anr** 2008 (5) CTC 181, **Chandrasekaran v. Doss Naidu** 2005 (3) MLJ 473, Have held that “ party must prove the factum of possession by evidence and that an Advocate Commissioner can be appointed only to inspect the suit property and note down the physical features and the Commissioner *cannot be appointed to prove the possession* and enjoyment. Further, it is also well settled that appointing an Advocate Commissioner, under the pretext of noting down the physical features, *indirectly to find out the nature of possession* should not be allowed.”
- vii)** In the present case at hand, the petitioners seek appointment of Advocate Commissioner only for the purpose of ascertaining under which village and survey number the suit properties are situated. This clearly amounts to collection of evidence and *it is well settled that Advocate Commissioner cannot be appointed to collect evidence or prove possession*. Further, the petitioners have to prove the same on their own legs and cannot seek the assistance of the Court to ascertain under which village and survey number the suit properties are situated.
- viii)** Further, normally in a suit for permanent injunction, no commission application would be entertained except in cases of encroachment. In the

present case at hand, the dispute is not related to encroachment but with regard to the survey number of the suit properties. The petitioners/plaintiffs have themselves stated the particulars of the survey numbers of the A and B schedule suit properties and also alleges that the temples in 'B' schedule properties have been constructed and in enjoyment of them over a period of more than 50 years. The petitioners further state that the temples in the 'B' schedule properties are situated in S. nos 16,17 in about 2000 sq. ft and that the correct survey numbers of it are not known to them. Hence, to find out the correct survey numbers of the suit properties, the petitioners state that the appointment of advocate commissioner is necessary. On the other hand, the respondents raises serious disputes with regard to the possession and title of the petitioners and also allege that the suit properties are temple properties which fall under Hindu Religious and Charitable Endowments. These *matters of disputes* can be decided only at the time of trial by adducing oral and documentary evidence before the Court.

- ix) As discussed supra, to find out the correct survey number of the suit properties, advocate Commissioner cannot be appointed in a suit for bare injunction as the same amounts to collection of evidence as have been decided in various cases by the Hon'ble High Court of Madras. Appointing an Advocate Commissioner, in this case, only to find out the survey number of the suit properties clearly amounts to collection of evidence. Hence, in the light of the aforesaid discussions, this Court is not inclined to allow this petition.

7. **RESULT :**

In result, this petition is dismissed. No order as to costs.

Dictated by me to the Steno typist, directly typed by her, corrected and pronounced by me in open court, on this the 27th day of October, 2025.

Principal District Munsif,
Cheyyar.

8. List of Witnesses:

On the side of the Petitioner : NIL
On the side of the Respondent : NIL

9. List of Documents :

On the side of the Petitioner : NIL
On the side of the Respondent : NIL

Principal District Munsif,
Cheyyar.