

**In the Court of II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

**Present: Thiru. C.Vijayakumar, B.A., B.L.,
II Additional District and Sessions Judge, Poonamallee.**

On this Monday, the 6th day of January 2025

I.A. No.1/2024 in O.S. No.28/2023

1. Mr. N.S. Babu, S/o. Srinivasalu Naidu,

2. Mr. B. Vasanth, S/o. N.S. Babu,

Both are residing at No.602, Bakthavatchalam Nagar, Nazarathpettai Village,
Chennai - 600 123.

...Petitioners / Defendants

-Vs-

1. Mrs. D. Gowri @ Gowriammal W/o. Devannan

2. Mr. D. Palani, S/o. Devannan

3. Mr. D. Saravanan S/o. Devannan

All are residing at No.5/272 Kannadapalayam Street, Kuthambakkam Village,
Thirumazhisai, Chennai – 600 124.

... Respondents / Plaintiffs

This petition was coming up before me for final hearing on 05.12.2024 in the presence of Mr. T. Narayan, learned counsel for the Petitioners/Defendants and M/s. S. Guna, R. Nareshkumar and S. Asha, learned counsel for

Respondents/Plaintiffs, on perusal of entire materials records, upon hearing the arguments on both sides and having stood over for consideration till this date this court pass the following:

ORDER

This petition is filed by the Petitioners/Defendants, under Order 26 Rule 9 of C.P.C. prays to appoint Mr. K. Manigandan Advocate or any other Advocate as Commissioner for local inspection and call for a report noting down the physical features on the suit property like the existence of factory shed, machineries, material and vehicles and electricity service and submit a detailed report with plan.

2) The crux of affidavit filed along with the petition by the 1st Petitioner are as follows:

The 1st Petitioner herein is the 1st Defendant in the above suit. The case involves a permanent injunction suit filed against the 1st Petitioner and his son to prevent interference with possession of 2.56 acres in Kuthambakkam Village. The 1st Petitioner claims he leased the land for 15 years starting in 2006, built industrial sheds, installed machinery worth crores for granite manufacturing, and obtained electric service for operations. Allegedly, the Plaintiffs, envious of his success, began obstructing his business. The Plaintiffs filed an earlier suit (O.S. No. 186/2016) seeking a similar injunction, which was withdrawn after an Advocate

Commissioner reported the presence of a factory and machinery on the property. The current suit repeats the request for an injunction, with claims of attempted trespass on 21-12-2022. During proceedings, Plaintiffs' witnesses (P.W-1 and P.W-2) deny the existence of the factory and machinery despite evidence to the contrary. To ascertain the truth, the 1st Petitioner requests the appointment of Advocate Commissioner Mr. K. Manigandan or another suitable advocate to inspect the property, verify physical features, and submit a report with a detailed plan.

3) The crux of the Counter filed by the 3rd Respondent are as follows :

The 3rd Respondent herein is the 3rd Plaintiff in the above suit. The 3rd Respondent opposes the Petitioners/Defendants application to appoint an Advocate Commissioner, claiming it lacks merit and legal basis. The disputed property, originally owned by Mrs. Devakkal and bequeathed through her Will (dated 19.10.1995), is in the possession of the Respondents. The Petitioners allegedly attempted to enter the property illegally, prompting police complaints and legal action for a permanent injunction. The Respondents deny the validity of a lease deed from 2006, asserting it was unsigned by a key party, not registered, and has since expired. They argue that the Petitioners never utilized the property as agreed and filed a vexatious suit (O.S. No.248/2016) to enforce the lease. They

also allege that the Petitioners' claims of running a business on the property are false, as multiple official inspections confirmed the property is vacant. The application for appointing a specific Advocate Commissioner is challenged as unnecessary and an attempt to delay proceedings. The Respondents assert their ownership and peaceful possession with supporting Government documents and court orders. Therefore, the 3rd Respondent prays to dismiss the petition.

4) The point for consideration is whether this petition is allowed or not ?

5) Point:

Heard both sides. Perused the documents.

6) The Petitioners herein who are the Defendants in the main suit filed this petition under Order 26 Rule 9 CPC seeking appointment of an Advocate Commissioner for local inspection and call for a report noting down the physical features on the suit property like the existence of factory shed, machineries, material and vehicles and electricity service and submit a detailed report with plan.

7) The main suit is filed by the Plaintiffs/Respondents for the prayer of permanent injunction with regard to the suit Property. The case of the Plaintiff is originally the suit property was owned by Devakkal mother of the first Plaintiff and maternal grandmother of the 2nd and 3rd Plaintiffs. She executed a registered Will

dated 19.10.1995 in favour of the 1st Plaintiff. She died on 5.5.1996. The suit property is the vacant land.

8) The Plaintiffs 1 and 2 entered into a lease agreement with the 1st Defendant with regard to the suit property for 15 years starting from 16.10.2006 to 30.10.2010. The advance for the lease is Rs 10,00,000/ and the monthly rent is Rs. 22,000/-.

9) After that the Defendant not interested in the lease and the possession not handed over to him. There was a suit in O.S. 248 of 2016 filed by the Defendants before the Sub Court Poonamalle for the Specific Performance of Contract that is directed the Plaintiffs herein to register a lease deed. And the same was pending, during the pendency the Plaintiffs returned the advance amount of Rs.10 Lakhs to the Defendants. In this circumstances the Plaintiffs filed this suit for the prayer of Permanent injunction

10) The Petitioners/Defendants contest the suit and contend that after the lease deed, the 1st Defendant took possession, constructed a shed, erected machinery, obtained an electricity connection, and stored materials for his granite manufacturing business. The Plaintiffs filed another suit before the District Munsif, Poonamallee, seeking a permanent injunction, which was later withdrawn

by the Plaintiffs. The Defendants are in possession and enjoyment of the suit property. The defendants are in continuous possession after the lease deed until today.

11) This suit is now pending for the Plaintiff side further witness. In this circumstances the Defendants filed this petition for the appointment of the Advocate commissioner. Appointment of Commissioner in terms of part III i.e. matter Incidental proceedings of CPC is provided by section 75 of the Code.

12) Section 75:- Power of court to issue commissions: Subject to such conditions and limitations as may be prescribed, the Court may issue a commission(a) to examine any person; (b) to make a local investigation; (c) to examine or adjust accounts; or (d) to make a partition; (e) to hold a scientific, technical, or expert investigation; (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit; (g) to perform any ministerial act. With this, Section 75, it would be appropriate now to refer Order XXVI Rule 9 of CPC, which provides appointment of Commissioner for local investigation.

13) The object of Order 26 Rule 9 of Civil Procedure Code is not to assist a party to collect evidence where the party can procure the same. An Advocate

Commissioner can be appointed under Order XXVI Rule 9 of the Code of Civil Procedure 1908 inter alia for elucidating any matter in dispute.

14) Now, this court has to consider the petition in the context of whether the request of the Petitioner would clarify any matter in dispute. The Plaintiffs filed the suit for a permanent injunction, claiming that they are in possession of the suit property, while the Defendants contend that they are in possession of the same property. The Defendants, along with their written statement, filed an advocate commissioner's report and a Xerox copy of photos concerning the suit property, stating that during the pendency of the earlier suit, in O.S. No.186/2016 before the Additional District Munsif, Poonamallee, an advocate commissioner was appointed, and he filed his report for the same property. The Petitioners stated that they are running an industry on the suit property, have constructed a shed, and erected machinery. To note down the physical features, they seek the appointment of an advocate commissioner. It is well settled in law that the appointment of an advocate commissioner in a suit for injunction would amount to the collection of evidence. The concerned parties must prove their case by presenting of their own evidence. Presently Seeking of an appointment of an advocate commissioner is intended to prove possession through the advocate commissioner and to collect evidence.

15) In this Circumstance, the Hon'ble High Court of Madras in the case of **Rajendran vs Lilly Ammal Alias Nelli Ammal And others decided on 25 November, 1997 reported in 1998(2)CTC163**

Para 3. Learned counsel for the Petitioner fairly represented that the appointment of Advocate Commissioner is only to note down the physical features of the property in respect of the possession and enjoyment of the same, by different parties. This is necessitated because the Plaintiff is enjoying the properties by leasing out the same to tenants and whereas the second Defendant claims to be in possession of one of the items of the property and hence unless the Advocate Commissioner is directed to note down the physical features of the property along with the possession of respective parties, the Petitioner would be prejudiced. From the arguments it is clear that the Advocate Commissioner is sought for only to note down the possession by the respective parties. For this purpose the Advocate Commissioner cannot be appointed. As such I do not find any error of jurisdiction in the order of the court below and accordingly the revision is dismissed. Consequently, the Civil miscellaneous petitions are, also dismissed.

When this court applies the above observation to the present case, the Petitioners' request for the appointment of an advocate commissioner to document the shed and industry on the suit property to prove their possession is not acceptable. The same principle was also reiterated by the Hon'ble High Court of Madras in the subsequent case of “**Benz Automobiles Private Limited v. Mohanasundaram, 2003 (3) MLJ 391**”.

16) The circumstances show that there is no demarcation dispute between the parties. The suit is based on a lease, and the fact in issue in this suit is whether the plaintiff is in possession of the suit property or not. Sufficient methods are available for the Petitioners to prove his possession without the need for an Advocate Commissioner's inspection.

In the result this petition is dismissed. No cost.

Dictated to steno-typist, typed by the steno-typist, corrected and pronounced by me in the Open Court on this the 6th day of January 2025.

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

Exhibits and Witnesses on both sides :- Nil.

**II Additional District and Sessions Judge,
Thiruvallur @ Poonamallee.**

DRAFT/FAIR ORDER
I.A. No.1/2024 in O.S. No.28/2023
Date : 06.1.2025
II A.D.C. Poonamallee.