

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: Selvi.A.Keerthana, B.A., L.L.B.,
District Munsif, Ponneri.

Friday, the 07th day of November 2025

INTERLOCUTORY APPLICATION NO.4 OF 2025

IN

ORIGINAL SUIT NO.29 of 2025

A.Gandhimathi

..... Petitioner/Plaintiff

-Vs-

Komala

..... Respondent/Defendant

This petition came up before me for final hearing on 23.10.2025 in the presence of Mr.V.Ammarathgandhi, Learned counsel for the Petitioner/Plaintiff and Mr.V.Purushothaman, Learned counsel for the Respondent/Defendant. Upon hearing the arguments made by the learned counsels for the petitioner and the respondent, and on perusal of the material case records, this Petition having stood over for consideration till this day, this Court delivers the following:

ORDER

This petition has been filed by the petitioner/plaintiff Under Order 26 Rule 9 of Civil Procedure Code to appoint an Advocate Commissioner along with Taluk Surveyor to inspect the suit property to note down the physical features of the same and to measure the suit property with the Assistance of the Taluk Surveyor of Ponneri Taluk to fix the boundaries and to file a report along with a sketch.

2. Brief averments of the Affidavit filed by the Petitioner are as follows:

The petitioner herein is the plaintiff in the suit filed for a declaration of title, recovery of possession, and a permanent injunction. The petitioner submits that he is the owner of the suit 'A' schedule property, which he purchased from one Mrs. Manimozhi, represented by her power agent, Mr. U. Sathiyakumar, under a sale deed dated 04.08.2023, registered as Document No.11942 of 2023. The respondent owns a house bearing Plot No.5, Abhi Garden, situated to the north of the petitioner's property. The respondent has encroached upon about 60 square feet of land described in the 'B' schedule property. The petitioner has paid the necessary fees, and the Surveyor has measured the suit property. Hence, it is necessary to appoint an Advocate Commissioner to substantiate the plaintiff's case and to note down the physical features of the suit property. Hence, this petition.

3. Brief averments of the counter filed by the Respondent are as follows:

The respondent submits that her property is situated in the North Chennai Registration District, Ponneri Circle, Alamathi Village, bearing Patta No.209 and Survey No. 264/2B, named Abhi Garden, Plot No.5, measuring about 600 sq. ft. After purchasing the said property, the respondent, along with her husband, has been in peaceful possession and enjoyment of the same since 2010, and the property has also been fenced by them. The respondent further submits that her husband is the absolute owner of the aforesaid property, and no encroachment has ever been made by them. A Surveyor had already been appointed, and both the respondent's property as well as the suit property were measured and demarcated as per the respective title documents. However, no report was submitted by the Surveyor. On 07.03.2025, while the respondent was carrying out construction work, the petitioner's husband allegedly trespassed into the respondent's property, demanded that the work be stopped, and further assaulted the respondent. A complaint was lodged, and CSR No. 214 of 2025 was registered in this regard. Hence, the respondent submits that no encroachment has been made by them and therefore prays that this petition be dismissed.

4. Evidence :

Neither the petitioner nor the respondent has placed any oral or documentary evidence before this court.

5. Point for determination :

Whether this petition can be allowed or not

6. Discussion and findings :

6.1. This Court has carefully considered the pleadings and submissions made by both the petitioner/plaintiff and the respondent/defendant. The petitioner claims to be the absolute owner of the suit 'A' schedule property, having purchased it under a registered sale deed dated 04.08.2023. According to the petitioner, the respondent, who owns the property on the northern side bearing Plot No. 5, Abhi Garden, has encroached upon about 60 sq. ft. of land described in the 'B' schedule property. The petitioner further states that the property has already been measured by a Surveyor, and to substantiate his claim, seeks the appointment of an Advocate Commissioner to note down the physical features and to ascertain the extent of encroachment, if any. On the other hand, the respondent contends that her property, measuring 600 sq. ft. in Plot No.5, has been in her and her husband's peaceful possession and enjoyment since 2010; that they have fenced their land; and that no encroachment has been made. The respondent further claims that a Surveyor had earlier measured both properties and demarcated the boundaries, but that no report was filed. It is also alleged that on 07.03.2025, while the respondent was undertaking construction work, the petitioner's husband trespassed and caused disturbance, for which a complaint was lodged.

6.2. From the pleadings, it is evident that the core dispute between the parties relates to the existence and extent of an alleged encroachment over a small portion of land. Both sides rely on their respective documents and claim possession within their

boundaries. In such circumstances, the actual physical features, boundary marks, and measurement on the ground are vital to determine whether there has been any encroachment by either party. Under Order XXVI Rule 9 of the Code of Civil Procedure, the Court may issue a commission for local investigation when it is necessary to elucidate any matter in dispute or to obtain evidence of the physical condition of property. The purpose of such a commission is not to gather evidence in favour of a party but to assist the Court in arriving at a just and proper conclusion based on accurate physical facts.

6.3. In the present case, though the respondent contends that a Surveyor has already measured the property, it is admitted that no report was submitted. Hence, the actual position of the boundary and the existence or absence of any encroachment remain unclear. A local inspection by an independent Advocate Commissioner, with the assistance of a qualified Surveyor, will therefore be essential to verify and record the physical features of both the petitioner's and respondent's properties, including measurements as per their title documents. Considering the nature of the dispute and the necessity to ascertain the factual position on the ground, this Court is of the considered view that the appointment of an Advocate Commissioner is indispensable to resolve the issue effectively. The Commissioner's report and sketch will aid the Court in adjudicating the claim of encroachment objectively and prevent further unnecessary disputes between the parties. In order to settle the dispute, this court views that the appointment of an Advocate Commissioner would be proper in the circumstances to find out whether there is any encroachment and who can inspect and measure the suit properties with the help of surveyor in the presence of both parties. The report of the Advocate Commissioner will elicit clarity on in-situ condition to this court so as to decide on the matter in dispute and may minimize the efforts to gather up evidence to adjudicate in this case. Hence this court is inclined to allow this petition.

7. Result:

In the result, this petition is allowed. Advocate Mr.C.Ravi is appointed as an Advocate Commissioner and he is directed to inspect and measure the suit property along with Assistance of Taluk Surveyor after giving due notice to both parties and to note down the physical features of the suit property and to report on the encroachment, if any and he is directed to file a detailed report along with plan on or before 19.12.2025. His remuneration is fixed at Rs.10,000/- and the petitioner is directed to pay the same to the Advocate commissioner directly. For Advocate Commissioner's report and plan call on 19.12.2025.

Dictated by me to the stenographer, directly typed by her in her desktop, corrected and pronounced by me in the open court, on this the 07th day of November 2025.

DISTRICT MUNSIF,
PONNERI.

Both side witnesses and documents:- NIL

DISTRICT MUNSIF
PONNERI

Fair/ Draft Order
I.A.No.4/2025
O.S.No.29/2025
Date:07.11.2025
DMC,PNI.