

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Thursday, the 25th day of September 2025

INTERLOCUTORY APPLICATION NO.6 OF 2025

IN

ORIGINAL SUIT NO.50 of 2020

1. P.Malarkodi
2. A.Jeyapathy
3. N.Dinesh, Rep. By their Power
Agent A.Sivabhushanam, Trustee

..... Petitioners/Plaintiffs

-Vs-

1. Mr.B.Mohammed Fahami
2. Mr.B.Mohammed Fazil Habibullah

..... Respondents/Defendants

This petition came up before me for final hearing on 03.09.2025 in the presence of Mr.G.Devaraj, Learned counsel for the Petitioners/Plaintiffs and Mr.K.Purushothaman, Learned counsel for the Respondents/Defendants. Upon hearing the arguments of the Plaintiff, after perusing the material case records and having stood over for consideration before this court till this date, this court delivers the following:

ORDER

This petition has been filed by the petitioners/plaintiffs Under Order 26 Rule 9 of Civil Procedure Code to appoint an Advocate Commissioner along with Taluk Surveyor directions to inspect, measure and note down the physical features of the suit property being the land measuring in total extent A.1.60 cents, in Old patta No.118, comprised in S.No.387/10, Sembium Manali Village, as per Revenue records Vichoor II Village, Ponneri Taluk, Tiruvallur District.

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

The petitioners herein are the plaintiffs in the above-mentioned suit filed for permanent injunction. The suit is currently at the stage of arguments. It is the case of the petitioners that there are nearly ten well-built houses constructed on the suit property. However, the defendants have suppressed this fact. Only during the cross-examination of DW1 was it deposed that the suit property, measuring about 1.60 cents, is lying vacant. This deposition is contrary to the actual facts, as the suit property is not vacant and is in the possession of the plaintiffs. In order to establish this fact, it is necessary to appoint an Advocate Commissioner. Hence, this petition.

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

The respondents/defendants submit that the suit property is a vacant land, and the petitioners must plead and prove their case only through documentary evidence. Even in the plaint, no statements have been made by the petitioners claiming that there are ten well-built houses on the suit property. It is the case of the respondents that the suit property is in their absolute possession and that it is indeed vacant land. Moreover, the respondents contend that an Advocate Commissioner cannot be appointed merely to collect evidence to prove the possession of any party. Hence, they pray for the dismissal of this petition.

4. Evidence :

Neither the petitioners nor the respondents have 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. The petitioners in this case, who are the plaintiffs in the suit, have approached the court seeking the appointment of an Advocate Commissioner to inspect, measure, and document the physical features of the suit property, which is claimed to be 1.60 cents in extent, identified under old Patta number 118 in Survey number 387/10, situated at Sembiam Manali Village, Vichoor II Village, Ponneri Taluk, Tiruvallur District, according to the Revenue records. The petitioners argue that there are ten well-built houses on the suit property, whereas the respondents/defendants submit that the land is vacant. The petitioners further contend that they are in possession of the property, in contrast to the defendants who claim to be in possession of the land and insist that it is vacant.

6.2. At this stage of the proceedings, which is now in the stage of final arguments, the petitioners have filed this petition seeking the appointment of an Advocate Commissioner to ascertain the physical state of the property. Specifically, the petitioners seek confirmation that the ten houses, as claimed, exist on the property. The defendants, on the other hand, continue to argue that the property is vacant and that they are in possession.

6.3. The court, after considering the submissions of both parties, finds that the dispute at hand involves factual assertions about the nature and possession of the land. However, it is well established in law that the role of an Advocate Commissioner is not to gather evidence for the parties but rather to perform specific duties, such as measuring or inspecting a property, in cases where such inspection is required to clarify a particular issue in the case. An Advocate Commissioner is appointed to assist the Court in specific matters and to report on facts as instructed by the Court. It is settled that the role of an Advocate Commissioner is not to collect evidence for the parties. The appointment of an Advocate Commissioner for the purpose of conducting investigations and collecting evidence in support of a party's

case is impermissible, as it infringes upon the procedural rights of the opposing party and the duties of the Court. Moreover, even if the petitioners claim that there are ten well-built houses on the property and that they are in possession, it remains their responsibility to substantiate these claims through proper legal means, particularly through oral and documentary evidence. Both parties have already been afforded ample opportunities to present their case, and it is the petitioners' duty to prove their claims in the suit by way of evidence. The appointment of an Advocate Commissioner at this stage would not aid the plaintiffs in establishing their claims but would rather constitute an attempt to bypass the evidentiary process prescribed by law.

6.4. In light of the above, the court finds no merit in the prayer for the appointment of an Advocate Commissioner at this juncture. The petitioners have not established the necessity for such an appointment, nor have they established a compelling reason that would justify this petition. Therefore, the petition is dismissed.

7. Result:

In the result, this petition is dismissed. No costs.

Dictated by me to the stenographer, transcribed and typed by her in her desktop, corrected and pronounced by me in the open court, on this the 25th day of September 2025.

DISTRICT MUNSIF,
PONNERI.

Both side witnesses and documents:- NIL

DISTRICT MUNSIF
PONNERI

Fair/ Draft Order
I.A.No.6/2025
O.S.No.50/2020
Date:25.09.2025
DMC,PNI.