

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

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

Friday, the 06th day of February 2026

INTERLOCUTORY APPLICATION NO.736 OF 2016

IN

ORIGINAL SUIT NO.224 of 2015

1. Mr.Venugopal (Decd.)
2. V.Kowsalya
3. V.Mugandan
4. V.Veeraghavan
5. V.Govindaraju (2 to 5 impleaded as per order in IA.17/2023 dated 01.09.2023 and Amended as per order in IA.18/2024 dated 11.06.2024)

..... Petitioners/Defendants

-Vs-

1. Sriramulu (Decd).
2. S.Jeeva
3. G.Komala
4. S.Baskar
5. S.Chitra
6. S.Murugan

(The respondents/plaintiffs 2 to 6 were impleaded as the legal representatives of the deceased 1st respondent/plaintiff as per order in IA.7/2020 dated 09.12.2020 and amended as per order in IA.11/2021 dated 19.07.2023)

..... Respondents/Plaintiffs

This petition came up before me for final hearing on 29.01.2026 in the presence of Mr.N.R.Gopaalan, Learned counsel for the Petitioners/Defendants and Mr.E.Prabu, Learned counsel for the Respondents/plaintiffs. Upon hearing the arguments made by the learned counsels for the petitioners and the respondents, 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 petitioners Under Order 26 Rule 9 and Section 151 of Civil Procedure Code to appoint an Advocate Commissioner along with Taluk Surveyor, with a direction to note down the physical features, measure the suit schedule property in Ponneri Taluk, Kandanpalayam village, S.No.317/18 and to file a report along with the rough sketch.

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

2.1. The petitioners herein are the defendants in the suit. The petitioners submit that they acquired the property in Survey No. 317/20 from one Mr. K.S. Arumuga Reddiar by way of a sale deed dated 06.05.2002, registered as Document No. 1264 of 2002. Based on the said sale deed, two portions measuring 2,750 sq. ft. and 3,471 sq. ft., totally measuring 6,221sq.ft., were transferred in favour of the petitioners/defendants. Though the said Arumuga Reddiar had purchased an extent of 44 cents, he was not in possession of the entire 44 cents. This was due to a discrepancy between the extent of the property mentioned in the sale deed and the measurements found in the Field Measurement Book (FMB) maintained by the Village Administration. The petitioners submit that the property in Survey No. 317/20 was measured, and after fencing was laid, the petitioners have been in possession and enjoyment of the said property for more than 13 years.

2.2. The petitioners further submit that the vendors of the petitioners and the respondent/plaintiff had earlier demarcated their respective properties, measured them, and laid boundary stones, which are still in existence in the suit property. Moreover, the land belonging to the respondent/plaintiff in Survey No. 317/18, which he acquired in the year 1986, was also demarcated by boundary stones, which are located slightly away from the suit land. Since 2002, and even prior thereto, the respondent/plaintiff had not raised any objection with regard to the laying of

boundary stones. It is the specific case of the petitioners that the land of the respondent/plaintiff is situated in Survey No. 317/18, whereas the petitioners are in enjoyment of the land in Survey No. 317/20, which the respondent/plaintiff is now attempting to grab by filing the present suit. As per the document relied upon by the respondent/plaintiff, marked as Exhibit A3, the total extent measures only 2,174 sq.ft., which is approximately 202 square metres, i.e., about 5 cents. When that being so, the respondent/plaintiff cannot claim an extent of 6 cents. Further, the respondent/plaintiff has not produced any document to establish his possession over 6 cents.

2.3. The respondent/plaintiff has filed the suit alleging that the petitioners herein have encroached upon 3 feet of land in Survey No. 317/18. On the contrary, it is the respondent/plaintiff who has encroached upon the petitioners' property by constructing a first floor, for which the petitioners lodged a complaint on 22.08.2015. A survey was conducted based on the survey stones, and it was found that both parties were enjoying their respective properties as per the FMB. Thereafter, the petitioners again lodged a complaint, and a CSR was registered in CSR No. 384/15. The respondent/plaintiff is not in enjoyment of the suit property. The FMB would clearly reveal that the respondent is enjoying land measuring 6 metres to the south, 37.4 metres to the east, 5.6 metres to the north, and 37 metres to the west. Further, the respondent has constructed a house in Survey No. 317/17B, which is adjacent to Survey No. 317/18. The respondent/plaintiff had obtained a temporary injunction in respect of Survey No. 317/18, and by misusing the said order, the respondent is attempting to grab the property in Survey No. 317/20. On 14.11.2015, the respondent again attempted to encroach upon the petitioners' property by extending his newly constructed house. Thus, the alleged 3 feet of land claimed by the respondent/plaintiff has been in the possession and enjoyment of the petitioners for more than 13 years. Under the guise of the interim injunction order, the respondent/plaintiff is attempting

to grab the land in Survey No. 317/20. Again, on 13.11.2015, the petitioners lodged a complaint at Minjur Police Station. On 14.11.2015, the respondent removed the boundary stones and encroached upon 3 feet in Survey No. 317/20.

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

3.1. The above application for appointment of an Advocate Commissioner to measure the suit property with the assistance of the Taluk Surveyor, as per the measurements found in the FMB sketch, to note down the physical features along with photographs, and to submit a plan and report in a suit for bare injunction, is in the nature of collection of evidence through a Commissioner in order to ascertain the possession of the parties, which is per se legally impermissible. No amount of inquiry or collection of evidence can be permitted under the guise of appointment of a commissioner for local inspection. As per the petitioner's father's memo dated 20.11.2015, he had purchased the property situated to the east of the suit schedule property. Whether the suit property is possessed by the plaintiffs and whether the property situated to the east of the suit schedule property is possessed by the defendants can be ascertained only after a full-fledged trial. Such determination is the exclusive function of the Court and cannot be outsourced to an Advocate Commissioner.

3.2. The petitioners state that their sale deed is anterior in point of time and that the defendants purchased their property only in the year 2002. The plaintiffs purchased the suit property from Suseela Ammal, whereas the defendants purchased the adjacent property from Suseela Ammal's husband, K.S. Arumugam. Even in the sale deed of the defendants, no sketch was attached to identify the specific portion purchased out of the total extent of 44 cents. Hence, it is false to allege that the defendants are in possession of the property as per the sale deed dated 06.05.2002 in Survey No. 317/20. K.S. Arumugam was not in possession of the entire 44 cents, though he had purchased the same. The FMB sketch maintained by the Revenue

Department does not, by itself, constitute prima facie proof of title or the extent of the property allegedly possessed by the defendants. Once the petitioners themselves claim variation in title holding, FMB sketch extent, and measurements, a petition seeking appointment of an Advocate Commissioner with the assistance of a Surveyor for local inspection based on the FMB sketch is not maintainable.

3.3. The allegations that K.S. Arumugam sold property in Survey No. 317/20 to the extent allegedly possessed by him after an alleged survey conducted by identifying survey stones in the year 2002, and that the defendants purchased the same, fenced it, and have been in possession and enjoyment thereof, are false and are hereby denied. All demarcation pillars, houses, plantations, and gardens have been in existence for the past 13 years. The survey stones laid at the time when Sulochana and Arumugam purchased the property are still available. There are no demarcation stones available as alleged by the defendants. The stone pillars allegedly put up by the respondents in the year 2002 are denied. The suit property is in the possession of the plaintiffs, and the defendants are in possession of the property situated to the east. The defendants are attempting to take advantage of the mistake that has crept into the FMB sketch with respect to measurements and extents while making sub-divisions. The possession of the suit property by the plaintiffs is based on their sale deed, wherein the measurements and extent are clearly specified.

3.4. The defendants, if at all, have to establish their title and possession in respect of any property other than the suit property only by filing an independent suit. The scope of the injunction suit filed by the plaintiffs is confined strictly to the suit property and cannot be expanded under the pretext of appointment of an Advocate Commissioner. The Courts have repeatedly held that an Advocate Commissioner cannot be appointed in a suit for permanent injunction to collect evidence regarding possession under the garb of noting down physical features or taking measurements through a surveyor with the help of revenue records. It is well settled that patta is not

a document of title, and the FMB sketch cannot override or take away the effect of a title document. Hence, the present petition is highly mischievous, an attempt to beat around the bush, and is consequently liable to be dismissed at the threshold. Therefore, it is prayed that this petition be dismissed.

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. Heard the learned counsel on either side and perused the records. The petitioners herein are the defendants in the suit filed for the relief of permanent injunction. The case of the petitioners is that the respondent/plaintiff, while putting up construction is attempting to encroach upon the property of the petitioners. It is further contended that the actual extent in Survey No. 317/18 is only about 5 cents, whereas the suit has been filed claiming 6 cents, and that the respondent/plaintiff is not in actual possession of the suit property. According to the petitioners, a survey had already been conducted based on the Field Measurement Book, which fact was deliberately suppressed by the respondent/plaintiff while instituting the suit.

6.2. The respondent/plaintiff opposed the petition contending that the appointment of an Advocate Commissioner for the purpose of collecting evidence is impermissible in law. It was submitted that the plaintiff has purchased the suit property, while the defendants are in possession of the property situated to the east of the suit property, and that the question as to who is in possession of which property can be adjudicated

only after a full-fledged trial. It was further contended that the defendants are not in possession of the suit property and that an FMB sketch, by itself, does not confer or prove title. According to the respondent, no valid survey was conducted in respect of the defendants' property.

6.3. Upon consideration of the rival submissions, this Court is of the view that the present suit being one for permanent injunction, the issues raised by the petitioners namely, the alleged encroachment by the respondent/plaintiff, the correctness of the extent mentioned in the plaint, and the question of possession are all matters that necessarily require adjudication on the basis of oral and documentary evidence let in by the parties during trial. These disputed questions of fact cannot be resolved by appointing an Advocate Commissioner. The law is well settled that a commissioner cannot be appointed to collect evidence or to ascertain possession, which is the exclusive domain of the Court. The Hon'ble Supreme Court in *Padam Sen and another v. State of Uttar Pradesh*, AIR 1961 SC 218, has categorically held that the power to appoint a commissioner cannot be exercised for the purpose of gathering evidence on behalf of a party. The Court observed that

“the Commissioner is not appointed to collect evidence which the parties can themselves adduce in support of their respective cases”. This principle has been consistently reiterated in subsequent decisions.”

Further the counsel for the respondent has also shared the citation of *Ravi vs Shanmugam* CRP (PD) No.3498 of 2015 dated 6.7.2020 to establish the fact that In a suit for bare injunction appointment of an advocate commissioner cannot be ordered either to prove the possession or to collect the evidence and also he has shared another citation in the case of *Somu Naidu versus Lalitha* CRP(PD) No.423 of 2011 dated 7.8.2020, to show the fact that in a suit for bare injunction, commissioner cannot be appointed unless the petitioners are admitted that the respondents already

encroached to the suit property and also not filed a suit for declaration, the petitioners cannot file petition to appoint an advocate commissioner.

6.4. In the light of the above settled legal position, this Court finds no merit in the present petition seeking appointment of an Advocate Commissioner. The petitioners are attempting to secure, through a Commission, a determination of issues that can only be decided at trial upon appreciation of evidence. Such an exercise is legally impermissible and contrary to the scope and object of Order XXVI of the Code of Civil Procedure. Accordingly, for the foregoing reasons, the petition stands dismissed.

7. Result :

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

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 06th day of February 2026.

DISTRICT MUNSIF,
PONNERI.

Both side witnesses and documents:- NIL

DISTRICT MUNSIF
PONNERI

Fair/ Draft Order
I.A.No.736/2016
O.S.No.224/2015
Date:06.02.2026
DMC,PNI.