

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : Tmt. R.D. Gurulakshmi, M.A., M.L., P.G.D.I & C.L.,
District Munsif, Tiruttani.

Dated the Thursday of 16th Day of October 2025

IA.No.6/2025 in OS.No.10/2017
(CNR.No.TNTR21-000010-2017)

...

1. E. Vijayaragavalu
2. E. Vanitha
3. C. Sulochana (died)
4. Krishnaveni (died)
5. Niksonneuton neupikan
6. Kuberan(died)

... Petitioners / 1 to 6 Defendants

/Versus/

1. G. Magesh kumar
2. C. Ganesan
3. C. Harikrishnan (died)
4. C. Velan
5. C. Jothiswari
6. C. Hemavathi
7. C. Chinnapaiyan
8. C. Dinesh
9. Lakshmi
10. Kokila

... 1st Respondent/Plaintiff

... 2 to 10 Respondents/7 to 15 Defendants

This petition came up before me for the final hearing on 09.10.2025 in the presence of M/s. V. Venkatesan, N. Balaji, P. Pichaimani, Advocates for Petitioners/ 1 to 6 Defendants, P3, P4, P6, R3 were died, M/s. Neeraj, Advocate for 1st Respondent/Plaintiff, R1 endorsed as counter. R2, R4 to R10 were remained exparty in suit. Upon hearing both sides and having stood over for consideration till this day, this court delivered the following:

ORDER

The petition is filed by the petitioner under order 26 Rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features in respect of the suit property and to file the report and plan.

1. **The averments by petitioner in brief:-**

The suit filed by the plaintiff against the defendants seeking for the relief of permanent injunction. The defendants filed their written statement stating that the plaintiff never enjoyed the suit property and the suit property is enjoyed by the public as it is formed as public road. The defendants are having good case on merit in the above suit. As the plaintiff filed this suit without asking the relief of declaration in the earlier suit and this suit is hit by the 'Resjudicate'. As such the suit property is used by the public and it is the road to access defendants residential area. The plaintiff also not in a possession of suit property till this date. The petitioner filed this petition to prove his bonafide in the above case that the suit property is used as public road till this date through, the Advocate commissioner appointed by this court. Hence this petitioners filed this petition.

2. Counsel for R1 endorsed as counter.

3. **Point for determination:-**

Whether the petitioners are entitled to the relief as sought for? or not?

4. **Point:-**

Heard both side. Record perused. According to the petitioners, the suit property is used by the public and it is the road to access defendants residential area. The plaintiff also not in a possession of suit property till this date. The petitioner filed this petition to prove his bonafide in the above case that the suit property is used as public road till this date. Hence the petitioners pray to allow this petition. 1st Respondent endorsed as counter.

5. This case is pending for the Defendants side further evidence as No further adjournment. In this case already plaintiff side evidence over and defendants side evidence also almost completed. In this juncture, the petitioners filed this petition for appointment of Advocate Commissioner. The suit is filed for permanent injunction. Since it is well settled law that in a suit for permanent injunction advocate commission petition is not maintainable which was already discussed by our Hon'ble High Court in many judgments. This Court relies upon the authority of Honble High

Court, Madras reported in 2017 (3) TLNJ 238 (Civil) has held that,

“Civil Procedure Code, Order 26 Rule 9 – Petition filed for appointment of Advocate Commissioner to ascertain who is in possession of the property – Petition returned – Revision Petition challenging the same- Held, parties have to establish their possession on the basis of oral and documentary evidence – parties cannot seek assistance of court to collect evidence – Revision Petition dismissed”.

Further, this Court relies upon the Hon’ble High Court of Madras judgment in 2018 (2) MWN(Civil) 60 held that

“Code of civil procedure, 1908 (5 of 1908), Order 26, Rule 9 - Suit for Permanent Injunction – Defendant filing Application for appointment of Advocate Commissioner – Contention that Schedule property in no way connected with suit – Application dismissed- Civil Revision Petitioner against that Order – Contention that propert mentioned in Application and property mentioned in Plaint are diferent – Certificate issued by Surveyor already filed – Suit in last stages – It is for Plaintiff to prove case – Belated Application not essential to decide dispute – Civil Revision dismissed.”

6. In this case from 06.08.2025 to till date petitioners/defendants not ready for adducing further evidence and filed this petition in the stage of defendant side further evidence as no further adjournment. As per the judgments of Hon’ble High Court of Madras in 2017 (3) TLNJ 238 (Civil) and 2018 (2) MWN(Civil) 60 this petition is not maintainable. This petition filed by the petitioners without any bonafide reasons. It was filed by the petitioners only to drag on the proceedings. The petitioners can not collect evidence by filing an advocate commission petition. Hence, this court is of view that this petition is liable to be dismissed.

In the result, this petition is dismissed with cost.

Dictated to my Steno – Typist, typed by her directly in computer, corrected and pronounced by me in open court, this the 16th day of October 2025.

District Munsif,
Tiruttani.

Petitioners & Respondent side Witnesses and Exhibits :- Nil

District Munsif,
Tiruttani.