

**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 16<sup>th</sup> Day of October 2025

IA.No.11/2025 in OS.No.17/2021

(CNR.No.TNTR21-000021-2021)

...

A. Dhanalakshmi

... Petitioner/Plaintiff

/Versus/

1. K. Kannappa Naidu (died)
2. K. Rajendiran
3. K. Indiraseanan
4. K. Chengamma
5. K.R. Santhi
6. V. Latha

... Respondents/Defendants

This petition came up before me for the final hearing on 19.09.2025 in the presence of M/s. R. Rajeshwara babu, S.V. Sandhaya, Advocates for Petitioner/Plaintiff, M/s. V.Kishore Reddy, E. Vijaya Kumar, A. Akila, R. Indu Prabha, K.A. Chandra Sekaran, B. Janani, Advocate for Respondents/Defendants. 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 along with Taluk Surveyor to fix the boundary in respect of the suit property in Old S.No.301/10, New S.No.301/12A/2C and found out the encroachment and note down physical features of the of suit property.

1. **Petition averments in brief:-**

(a) The petitioner is the absolute owner of the schedule mentioned property. The petitioner has purchased the same by registered sale deed dated 24.07.2019. On the day of sale itself the petitioner took possession of the suit property. The petitioner has developed the vacant land by leveling it made reclamations and development. The suit property originally belonged to S.M. Annamalai who died intestate leaving behind his wife S.A. Thualsi, four sons and one daughter as his legal heirs to succeed his estate. The suit property was allotted to this plaintiff's vendor S.A. Tulasi in the

family arrangement. The second son Solainatha also attested in the sale deed. The sale deed has been executed in lawful manner in properly valued stamp papers. Except the petitioner no other persons has got any right, title or interest over the schedule mentioned property.

(b) While so the defendants 1 to 3 have no manner of any right, title or interest, they attempted to interfere with the petitioner's peaceful possession and enjoyment of the suit property. Therefore the petitioner lodged a complaint to the Inspector of Police, Tiruttani. The S.I of Police enquired in detailed manner. The defendants No.1 to 3 gave an undertaking that they would not interfere with petitioner's lawful possession and enjoyment of the suit property. The police advised to arrange the surveyor to measure the suit property. Hence the petitioner has taken steps to measure the suit property and date also fixed on January 2021. But the defendant adamantly denied to accept that survey. The defendants were forcefully, illegally trying to grab the petitioner's property. The defendants are utter strangers. The defendants has no right over the suit property and they were illegally trespassing.

(c) The petitioner and his vendor, his vendor's vendor were in continues possession from the year 1947 onwards. The petitioner has got prima facia case and the balance of convenience. The petitioner has already filed the advocate commissioner petition in IA.2/2021 and the same has been closed for trial. In the month of May 2025 the revenue officials were surveyed suit property to issue the Gramanatha patta, the petitioner came to know that the defendants encroached upon south side of the suit property. While the suit is pending the defendants formed the temporary shed with steel sheet around 60 Sq.feet. Hence it is necessary to appoint the advocate commissioner along with the taluk surveyor. The petitioner has to amend the plaint in to recovery of possession. Hence this petition.

2. **Counter filed on behalf of the respondents in brief:-**

(a) The petition is not maintainable either in law or on merits. The allegations in paras 2 and 3 of the affidavit are not known to this respondent and the same is denied by this respondent. The allegations that this respondent has no title,

right and interest over the suit property has attempted to interfere with the petitioner's peaceful possession and enjoyment of the suit property are all false and denied by this respondent. The allegations in paras 5 and 9 of the affidavit are partly correct and partly incorrect. The allegations in paras 6 to 8, 10 of the affidavit are all false and denied by this respondent.

(b) When the suit is filed by this petitioner, petitioner also filed a petition under order 26 Rule 9 C.P.C. in IA.No.1/2021 which was dismissed on 16.12.2021. Hence this 2<sup>nd</sup> petition for the same prayer is not at all maintainable and is liable to be dismissed. The petitioner has filed this petition to get unlawful gain over the suit property. Since the petitioner filed this suit only for Permanent injunction without the prayer for declaration. Hence without deciding the title of the suit property, when the title is under cloud, this petition to appoint Advocate Commissioner along with Surveyor is not at all maintainable. This petition is filed to collect evidence to prove their case and their title.

(c) The 1<sup>st</sup> respondent has purchased the property in old S.No.301/10 in New S.No.301/12A and also in S.No.301/11 in New S.No.301/12A2C/1A in the year 1989 and 1993 and also constructed a house in the year 1995. Hence there was a dispute in the title of the suit property. The petitioner has not filed even any single document to prove her possession. There is a cloud in the suit property. Hence in a suit for mere permanent injunction, Advocate commission cannot be appointed. The petitioner cannot collect evidence by appointing Advocate commission. Hence this petition is not maintainable and liable to be dismissed.

(d) The petitioner cannot file this petition for appointment of Advocate commissioner along with Surveyor to collect evidence or gather evidence, the petitioner has to prove her case by producing relevant evidence and available records. In a civil suit the plaintiff has to prove her title to the suit property and her possession on the date of the suit by producing relevant records. The petitioner instead of proving her possession of the suit property by producing relevant records before this court has come forward with this petition which is luxurious one and not a case of

necessity. Hence this petition cannot be allowed as per the judgment of Hon'ble High court of Madras reported in C.D.J. 2008 M.H.C.5205. Hence this petition is unwarranted and is to be dismissed in limini. There is no bonafides and no merits in this petition. This suit was already posted in special list, at this stage this petition is not at all maintainable, since the petitioner has filed this petition to drag on the proceedings. Hence this petition is liable to be dismissed.

3. **Point for determination:-**

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

4. **Point:-**

Heard both sides. According to the petitioner, the petitioner is the absolute owner of the schedule mentioned property. The petitioner has purchase the same by registered sale deed dated 24.07.2019 and from the date of sale the petitioner is in possession of the suit property. The petitioner and his vendor, his vendor's vendor were in continues possession from the year 1947 onwards. The petitioner has already filed the advocate commissioner petition in IA.2/2021 and the same has been closed for trial. In the month of May 2025 the revenue officials were surveyed suit property to issue the Gramanatha patta. The petitioner came to know that the defendants encroached upon south side of the suit property. While the suit is pending the defendants formed the temporary shed with steel sheet around 60 Sq.feet. Therefore very necessary to appoint the advocate commissioner along with the taluk surveyor. Hence the petitioner prays to allow the petition.

5. The Respondents resisted the petition by contending that at the time of filling of this suit, this petitioner filed a petition under order 26 Rule 9 C.P.C and the same was numbered as IA.No.1/2021 which was dismissed on 16.12.2021 on merits. Hence this 2<sup>nd</sup> petition for the same prayer is not at all maintainable. The petitioner has not filed even any single document to prove her possession. There is a cloud in the suit property. The petitioner filed this petition to collect evidence or gather evidence. The petitioner has to prove her case by producing relevant evidence and available records. In a civil suit the plaintiff has to prove her title to the suit property

and her possession on the date of the suit by producing relevant records. Hence the respondents pray to dismissed this petition.

6. On perusal of records, the suit is filed for permanent injunction against the defendants. This suit is pending for trial. In this juncture, the petitioners filed this petition for appointment of Advocate Commissioner. The petitioner stated that in the month of May 2025 the revenue officials were surveyed suit property to issue the Gramanatha patta. The petitioner came to know that the defendants encroached and formed the temporary shed with steel sheet around 60 Sq.feet.

7. The petitioner relied on the judgment of Hon'ble High Court in C.R.P. (PD) (MD)No.204/2010 and M.P.(MD)No.1/2010 dated 02.08.2011. This suit is filed for permanent injunction alone. The above said case is filed for declaration and injunction. In this case petitioner already filed petition under Order 26 Rule of CPC in IA.No.2/2021 which was disposed on 16.12.2021 on merits. But the petitioner wrongly stated in his petition that petition disposed as suit is ribbed for trial. In IA.No.2/2021 this court's held that

“Hence there was a dispute in the subdivision of the suit property. Moreover the petitioner have not filed any document to prove his possession, since there is dispute in the suit property. There is a cloud in the suit property. Hence in mere permanent injunction suit Advocate Commission cannot be appointed legally. It is the duty of the petitioner to approach the Court legally when the suit property was disputed and the title was in question. Therefore the petitioner can not collect evidence by appointing Advocate commission. The petitioner has to be taken necessary steps for declaration as stated by the Respondents herein. Hence this petition is not maintainable and liable to be dismissed without costs.”

Till date this suit is for permanent injunction alone. Petitioner not amend the prayer for declaration or recovery of possession. Further suit is posted in the trial list. Since the above said authority relied to the suit for declaration and injunction, in a suit for bare injunction in which already IA.No.2/2021 was decided on merits as for collecting evidence appointment of Advocate Commissioner is not maintainable.

Therefore said authority is not applicable to this case.

8. 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”.

As per the judgment of Hon’ble High Court of Madras in 2017 (3) TLNJ 238 (Civil) 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. No cost.

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

District Munsif,  
Tiruttani.

Petitioner side Witnesses and Exhibits :- Nil

Respondents side Exhibits and Witnesses :- Nil

District Munsif,  
Tiruttani.