

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 Wednesday of 24th Day of September 2025

I.A.No.9/2025 in OS.No.43/2015

(CNR.No.TNTR21-000069-2015)

G.Jayaseeli

...

... Petitioner/ Plaintiff

/ Vs/

S. Amavasai

... Respondent/ Defendant

This petition came up before me for the final hearing on 15.09.2025 in the presence of M/s. M. Mohan Raju, G. Sivakumar, Counsels for Petitioner/ Plaintiff, M/s. V.S. Velayudham, Counsel for Respondent/ Defendant, 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 inspect the suit property in S.No.224/22 and respondent's land in S.No.224/21 and to demarcate the encroached portion in suit 'B' schedule property and to find out in which property the respondent has put up construction etc., and also other features that are shown to him at the time of his inspection and to file report with rough sketch.

1. Petition averments in brief:-

(a) The petitioner filed the suit against the defendant for permanent injunction restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit B schedule property. Then plaint was amended for the relief of declaration of petitioner's right and title to suit B schedule property and for mandatory injunction. The petitioner is the absolute owner of the suit 'A' schedule mentioned property. Originally it is gramamatham vacant land. The petitioner occupied the said schedule mentioned property vacant site about 25 years back and was in possession and enjoyment of the same by having small thatched house.

(b) Then the petitioner removed the thatched house and constructed a

terraced house in it about 15 years back measuring north to south 17 feet and east to west 43 feet leaving 4 feet breadth vacant space on the northern side and 7 feet breadth vacant space on the southern side more fully described in suit 'A' schedule. In recognition the petitioner's right, title and possession of the said 'A' schedule property, patta was given to the petitioner by the Tahsildar, Tiruttani in S.No.184/22 under patta no.519.

(c). The respondent/defendant who is having vacant site on the south of the petitioner 'A' schedule mentioned property laid foundation and constructed terraced house high handedly in southern side 7 feet breadth vacant space which is shown as suit 'B' schedule property, after the suit was filed inspite the petitioner's protest. The respondent not have any right, title or possession in the B schedule property. Further the defendant in his written statement claiming that he has constructed building in his land in S.No.184/21 and not in petitioner's land in S.No.182/22. So appointment of Advocate Commissioner along with Taluk Surveyor is necessary to measure the suit property in S.No.224/22 and respondent's land on the south of it in S.No.224/21 and to demarcate the encroached portion in suit 'B' schedule property to find out in which property the respondent has construct the building. The report of the advocate commissioner and surveyor will also avoid much oral evidence at the time of trial and also help this court to come to just conclusion of the matter in dispute. Hence this petitioner filed this petition.

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

(a) The petition is not maintainable either in law or on merits. The averment para No.2 is true to an extent that suit was filed for permanent injunction and the same was amended for declaration and recovery of possession of suit B schedule property. The averment para No.3 is false and denied. The petitioner/plaintiff filed the above petition to appoint an advocate commissioner along with Taluk surveyor to inspect and measure the suit properties and file report which is legally unsustainable. The petitioner/plaintiff filed this suit in the year of 2015 along with Advocate commissioner petition and the same was allowed and Advocate Commissioner was appointed to inspect the suit properties and to file the report.

(b) Advocate Commissioner was inspected the suit property and filed report. The said fact was suppressed by the petitioner/plaintiff in the affidavit. Further based on the Advocate Commissioner's report the schedule was amended in suit and injunction petition. This respondent filed counter and written statement. After that the petitioner/plaintiff filed a petition for contempt and the same was dismissed on merits. The petitioner/plaintiff never preferred any appeal against the said order.

(c) Further the petitioner/plaintiff filed petition to demolish the suit B schedule construction and restore the vacant site and the said petition was dismissed on merits. The petitioner/plaintiff never preferred any appeal against the said order. After dismissal of contempt and restore the suit B schedule property, the petitioner filed petition to amend the plaint deleting the prayer of permanent injunction and seeking declaration and recovery of possession of suit B schedule property. The amendment of plaint was allowed in the year 2021. After that the petitioner/plaintiff never took any steps.

(d) In the year of 2024 the above suit was listed of trial, the petitioner filed petition to appoint an Advocate Commissioner along with surveyor to inspect the property. The said petition was returned since already an Advocate Commissioner's report is available and no new change of circumstances arose to file another Advocate commission. But the petitioner/plaintiff failed to commence the trial, the suit was dismissed for default on 03.07.2024. The petitioner already filed petition to appoint an Advocate Commissioner and the same was dismissed. Hence this petition is barred by resjudicata and not maintainable for filing second time.

(e) After dismissal of the suit, the petitioner filed petition to restore the suit and set aside the dismissal order and the same was allowed on 22.10.2024. Again the petitioner filed this petition to appoint an Advocate Commissioner and the same was returned. The petitioner failed to commence the trail again the suit was dismissed on 26.11.2024. Again the petitioner/plaintiff filed a petition to restore the suit and the same was allowed and this suit was restored on 02.06.2025. After restoring the suit, this petition to appoint an Advocate Commissioner was filed and returned so many times and finally numbered as IA.No.9/2025. So the petitioner/plaintiff is dragon the

case for past 10 years without conducting the false suit.

(f) Already an Advocate Commissioner was appointed at the time of filing the suit and the said Advocate Commissioner inspected and filed his report. The petitioner/plaintiff knows about the dispute in the suit B schedule property. From the date of filing the suit, the petitioner/plaintiff gave much troubles to this respondent. Already an Advocate commissioner was appointed and filed report, the petitioner never filed any objection to the said report. Without scraping the said report, the Advocate Commissioner never appointed second time. The petitioner never stated about previous report in anywhere in her affidavit. Hence the second petition is not maintainable. This petition is unsustainable as per law.

(g) This petition is filed to measure the suit B schedule property and whether any encroachment is made by this respondent which is totally contra to the pleadings of the plaint. The plaint was amended and stated that the suit B schedule property was encroached by the respondent. So this petition is unnecessary. Advocate commissioner cannot be appointed to collect the evidence of encroachment and who is in possession of suit B schedule property. The petitioner has not stated justifiable reasons to allow the petition. The appointment of Advocate Commissioner second time is not maintainable as per law. Hence this petition is liable to be dismissed with cost.

3. Point for determination:-

Whether the petitioner is entitled to the relief as sought for? or not?

4. Point:-

Heard both sides. Record perused. According to the petitioner, the petitioner occupied the said schedule mentioned property and was in possession and enjoyment of the same by having small thatched house. The petitioner removed the thatched house and constructed a terraced house in it about 15 years back measuring north to south 17 feet and east to west 43 feet leaving 4 feet breadth vacant space on the northern side and 7 feet breadth vacant space on the southern side more fully described in suit 'A' schedule. The respondent/defendant who is having vacant site on the south of the petitioner 'A' schedule mentioned property laid foundation and

constructed terraced house high handedly in southern side 7 feet breadth vacant space during the pendency of suit, inspite the petitioner's protest which is shown as suit 'B' schedule property. The defendant in his written statement claiming that he has constructed building in his land in S.No.184/21 and not in petitioner's land in S.No.182/22. Therefore appointment of Advocate Commissioner along with Taluk Surveyor is necessary to measure the suit property in S.No.224/22 and respondent's land on the south of it in S.No.224/21 and to demarcate the encroached portion in suit 'B' schedule property to find out in which property the respondent has construct the building. The report of the advocate commissioner and surveyor will also avoid much oral evidence during trial and also help this court to come to just conclusion of the matter in dispute. Hence the petitioner prays to allow the petition.

5. The Respondent resisted the petition by contending that already Advocate commissioner was appointed and filed his report, the petitioner never filed any objection to the said report. Without scraping the previous Advocate commissioner's report, Advocate Commissioner never appointed for second time. The petitioner never stated about previous report in anywhere in her affidavit. Hence the second petition is not maintainable. This petition is unsustainable as per law. This petition is filed to measure the suit B schedule property and to find out whether any encroachment is made by this respondent which is totally contra the pleadings of the plaint. The plaint was amended and stated that the suit B schedule property was encroached by the respondent. So this petition is unnecessary. The petitioner has not stated justifiable reasons to allow the petition. The appointment of second Advocate Commissioner is not maintainable as per law. Hence, the respondent prays to dismiss the petition with costs.

6. In this case, Advocate Commissioner already appointed and he inspected the suit property as per the order in IA.No.223/2014. Advocate Commissioner's report and plan filed on 25.06.2015. For that Advocate Commissioner's report and plan till date objection not filed on the side of petitioner/Plaintiff. Further the IA.No.223/2015 was closed on 25.06.2015 as "as objection in 10 days". This petitioner not even filed an objection in the previous

Advocate Commissioner's report and plan for the past 10 years. Now the petitioner/plaintiff filed this second petition seeking the appointment of Advocate Commissioner along with Surveyor. The Advocate Commissioner in his earlier report itself stated about the encroachment as follows:

"மேற்கண்டவாறு A-அட்டவணை சொத்தின் தென்பகுதி மனுவில் காட்டப்பட்டுள்ள B-அட்டவணை சொத்தின் அளவுபடி வடக்கு தெற்காக சுமார் 5 அடி அகலமும், கிழக்கு மேற்காக 30 நீளத்திற்கு எதிர்மனுதாரர் ஆக்கிரமித்து கடகால் போட்டு வைத்துள்ளார் ."

Even in the previous report and plan Advocate Commissioner clearly stated about the rapprochement in B schedule property with clear measurements. On the basis of Advocate Commissioner Report petitioner/Plaintiff amended this suit from bare injunction to recovery of possession and mandatory injunction.

7. Originally this suit posted in the trial list on 03.07.2024. On that said date plaintiff not ready for trial. Hence suit dismissed for default. The suit is restored as per order in IA.No.2/2024. After that the petitioner not ready for conducting the suit hence once again suit dismissed on 26.11.2024. The suit was restored as per the order in IA.No.4/2025. The main objection of the respondent is that the petitioner is not interested to conduct the suit and she wantonly dragon the suit by filing these type of petitions. The Advocate Commissioner filed report and plan on 25.06.2015. After a lapse of 10 years without filing any objection to the previous report, the petitioner filed this petition with a malafide intention to dragon the proceedings.

8. The petitioner relied on the Judgment of Hon'ble High Court in 2024-5-L.W.374 dated 13.08.2024 /C.R.P.No.3261 of 2022 and C.M.P.No.1799 of 2022. In the above said judgment, the Hon'ble High Court held that to find out the encroachment Advocate Commissioner appointment is necessary. In this case since already Advocate Commissioner pointed out the encroachment and he filed the report and plan the Hon'ble High Court Judgment is not applicable to this case.

9. Further the petitioner relied on the following Judgment of Hon'ble High Court in C.R.P.(PD)(MD)No.204 of 2010 and M.P.(MD)No.1of 2010. In the above said judgment Hon'ble High Court held that if earlier application for appointment of Advocate Commissioner is dismissed the petitioner is entitled for the second

application. In this case since already Advocate Commissioner is appointed and he filed the report and plan showing the encroachment. The plaintiff also amended the plaint for recovery of possession and mandatory injunction on the basis of Advocate Commissioner report. Hence the above said Hon'ble High Court Judgment is not applicable to this case. This petition was filed by the petitioner without any bonafide reasons. It was filed by the petitioner only to drag on the proceedings. 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 24th day of September 2025.

District Munsif,
Tiruttani.

Petitioner side Witnesses and Exhibits :- Nil
Respondent side Exhibits and Witnesses :- Nil

District Munsif,
Tiruttani.