

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 Monday of 25th Day of August 2025

I.A.No.4/2024 in OS.No.52/2024

(CNR.No.TNTR21-000074-2024)

1. Vijay swamynathan
2. M. Jeyam
3. Sngeetha Jeyam

...Petitioners/Plaintiffs

/Versus/

1. B. Prakash
2. The State of Tamil Nadu District Collector, Tiruvallur]
3. The Revenue Divisional Officer, Tiruttani'
4. The Tahsildar, Tiruttani

...Respondents/ Defendants

This petition came up before me for the final hearing on 11.08.2025 in the presence of M/s. P.C. Santhya Rani, B. Chandrean, S. Swarnalatha, M. Lavanya, D.M.V. Prabhu, G.M. Vijayalakshmi, Advocates for Petitioners/Plaintiffs, M/s. S. Karthikeyn, E. Thanigairaj, Advocates for 1st Respondent/ Defendant, Government Pleader for 2 to 4 Respondents/ Defendants, R2 to R4 counter not filed hence set exparty. 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 inspect the suit property and note down physical features of the of A, B, C, D and E schedule properties and file his report with rough sketch and to take photographs.

1. Petition averments in brief:-

(a) The A schedule property was purchased by J. Meenarani who is the mother of 1st and 3rd plaintiff and wife of 2nd Plaintiffs. The said J. Meenarani was in possession and enjoyment of A schedule property till her death by mutating her name in the revenue records and obtained patta. The C schedule property was purchased by the plaintiff's mother Meenarani from one K. Sreeramulu dated 07.10.2014 and some items of C schedule property from one James and two others on 03.11.2014. The said Meenarani died on 04.11.2022. After her death her legalheirs have succeeded and enjoying the A and C schedule properties.

(b) The 2nd Plaintiff was purchased the D schedule property from 1st

Defendant Prakash and his legal heirs dated 05.02.2016 and the plaintiffs are some more items of D schedule property from one Murali, S/o. Desappa reddy and some more items of D schedule property from one Krishna Rao S/o. Munusamy. The 2nd plaintiff mutated patta in his name for D schedule property as Patta No.1146 and 1247 and he is in possession and enjoyment by cultivating seasonal crops till date.

(c) The 1st Defendant purchased E schedule property from one A. Latha, W/o. Krishna Rao dated 20.05.2016 and he changed patta in his name as patta No.1144. The B schedule property is the Government Anadeenam Porambokku land and through B schedule property the petitioners have to access to C, D and E schedule properties. The vendors of petitioners and including the 1st defendant family members were used to B schedule property as way to take agricultural vehicles.

(d) The 1st defendant he himself was cultivating the C,D and E schedule properties sugar cane crop and was taking through B schedule property. There is no other way other than B schedule property Anadeenam land to cultivate C, D, E schedule properties and other lands from the A schedule and B schedule. One week back, the 1st defendant objected while the plaintiffs took tractor for paddy cultivation to take the vehicle through B schedule property. The 1st defendant wantonly to extract money from the plaintiffs.

(e) The plaintiffs are using the B schedule property past 10 years, the 1st defendant has no manner of right or title over the B schedule property. The 2 to 4 defendants and the subordinate never objected while using the B schedule property as pathway. The petitioners have to go through B schedule property only to cultivate their lands. If the path way B schedule is locked by way of planting trees the petitioners could not cultivate their lands it would cause heavy loss and damages to them. Hence the plaintiffs filed this suit for permanent injunction against the 1st defendant. Therefore it is necessary to appoint an Advocate Commissioner to note down the physical features and boundaries of the A, B, C, D and E schedule properties. Hence this petition.

2. **Counter filed on behalf of the 1st respondent in brief:-**

The petition is not maintainable either in law or on merits. This respondent stated in the written statement, this respondent has no objection to allow the Advocate

Commission petition. But this court may be direct the advocate commissioner to note down the actual physical features. The petitioner's main contention is B-schedule property is the only way to reach A, C, D and E schedule property. For which this court also direct the advocate commissioner to note down, is there any other ways to reach the property. The respondent gave no objection to allow this application only to get permanent solution on this dispute and this respondent denied all the averments mentioned in the petition.

3. Point for determination:-

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

4. Point:-

Heard both sides. Record perused. According to the petitioners, the plaintiffs are using the B schedule property for past 10 years, the 1st defendant has no manner of right or title over the B schedule property. The petitioners have to go through B schedule property to cultivate their lands. If the B schedule path way is locked by way of planting trees the petitioners could not cultivate their lands. It would cause heavy loss and damages to them. Hence the petitioners pray to allow the petition. The 1st Respondent submitted that he had no objection to allow this application only to get permanent solution on this dispute.

5. On perusal of records, the suit is filed for permanent injunction against the 1st defendant. This suit is pending for framing issues. In this juncture, the petitioners filed this petition for appointment of Advocate Commissioner. The suit is filed for permanent injunction. The Hon'ble High Court by various decisions have categorically held that possession of a property cannot be ascertained by way of appointing Advocate Commissioner. 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”.

6. This petition is filed in the stage of framing of issues. 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 25th day of August 2025.

District Munsif,
Tiruttani.

Petitioners side Witnesses and Exhibits :- Nil

Respondents side Exhibits and Witnesses :- Nil

District Munsif,
Tiruttani.