

**IN THE COURT OF DISTRICT MUNSIF AT AMBATTUR.**

**PRESENT: TMT.J.MADHUMITHA, B.A.B.L(HONS.), L.L.M.,  
DISTRICT MUNSIF, AMBATTUR.**

Thursday, 05<sup>th</sup> day of June 2025.

**INTERLOCUTORY APPLICATION NO.2 OF 2024**

**IN**

**ORIGINAL SUIT NO. 263 OF 2024**

**CNR.No.TNTR22 – 000387 – 2024**

Mrs.Shalini

....Petitioner/ Defendant

Versus

Mr.K.Baskar

.....Respondent/Plaintiff

This petition having come on 05.06.2025 before me for final hearing in the presence of Shri.K.Shankar, learned counsel for the Petitioner/Defendant, Shri.P.Saravanan, V.Suresh, R.Shanmugapriyan, S.Gouthama Priyan and N.Thanigaimalai, learned counsels for the Respondent/Plaintiff, upon hearing the arguments made by the learned counsel for the petitioner and the respondent and perusal of the records, having stood over for consideration till this day, this Court delivers the following:

**ORDER**

1. Petition filed Under order 26 Rule 9 CPC seeking to appoint Advocate Commissioner and pass such necessary orders as this Honourable Court may deem fit in the circumstances of the case and thus render justice.

**2. The brief averments contained in the petition as follows : -**

The Petitioner submit that the Respondent/Plaintiff is trying to encroach the Petitioner property and several attempts were taken for measuring the land of petitioner. That the Respondent/Plaintiff gave a representation to RDO but did not

turn up for the enquiry after receiving the summon and it is very clear that the Respondent/Plaintiff willfully did not cooperate for measuring the Schedule Mentioned Property and this itself shows the true motive of the Respondent/Plaintiff to grab Petitioner property. The petitioner prays to appoint an Advocate Commissioner, in order to explain the true facts of the case and to prove that the Respondent/Plaintiff has illegally trespassed and encroached the property and has suppressed the material facts and has approached this Court with unclean hands.

**3. The averments in the Counter filed by Respondent, in brief are as follows :**

4. The respondent/plaintiff has filed the above suit against the Respondent/Defendant for the relief of granting permanent injunction restraining the defendant, his men, agents or servants or anybody acting on her behalf from interfering with the plaintiff's peaceful possession and enjoyment of suit schedule property and other reliefs.

5. The respondent/Plaintiff's father is in possession and enjoyment of suit schedule property and put a compound wall across the suit property and also obtained a patta in his name, vide patta no.7262. The respondent/plaintiff submit that his father was expired on 01.03.2020 and leaving behind the respondent/plaintiff and his two sisters namely C.Vihjaya and Santhi are his legal heirs. After the demise of the said Kuppiah Naidu, the respondent/Plaintiff and his sisters inherited the property. Thereafter the said C.Vijaya and Santhi executed a release deed on 18.03.2023 in favour of the respondent/plaintiff, vide document no.4044/2023 on the file of SRO Avadi. Since from the execution of release deed the respondent/plaintiff is in possession and enjoyment of the suit schedule property as absolute owner without any let or hindrance free from all encumbrances. Presently the patta stands in the name of the respondent/plaintiff, vide patta no.13491. The respondent /plaintiff submit that the petitioner/defendant had a property adjacent to the respondent/plaintiff's

property and already petitioner/defendant was evicted from possession and enjoyment of the said property by the original owner. Meanwhile the petitioner/defendant is very well aware that she was cheated by one R.D.Sarath who sold the said property to her with created documents and now the petitioner/defendant is landless. But all of sudden now the petitioner/defendant is taking different stand that the respondent/plaintiff has illegally encroached her land and build a compound wall in order to usurp her property is utter false. The respondent/plaintiff further submit that currently the petitioner/defendant is landless and there is no need to measure it. Hence the petition to appoint advocate commissioner filed by the petitioner/defendant is infructuous. It is therefore prays that this Court may be pleased to dismiss the petition with costs and thus render justice.

6. The point for consideration is whether this petition can be allowed or not as against the Respondent?

## **7. Discussion :**

Heard. Perused records. No documents marked. On due perusal of the both side contention, this court finds that the Petitioners /Plaintiffs have come up with this application seeking to to appoint Advocate Commissioner to make local inspection and to note down the physical features. It is observed from the records submitted before this court that the main suit is for mandatory injunction and permanent injunction, and that a dispute with regard to boundaries has arouse.

8. Further from the reported Judgment of Hon'ble Apex Court in 2016 (3) MWN 527, 2014 (1) MWN 268, 2006 (5) CTC 178, it is understood that the object of the local investigation under Order 26, Rule 9, is not to collect evidence. But, if there is any doubt about the area of the land, boundaries, identification or location of an object then local investigation is necessary. In the instant case, the main suit prayer is for permanent injunction which regards to the lawful possession or not, and

there is no question of dispute over the boundaries or encroachment.

9. It is the Petitioner/Defendant who has sought for apointment of Advocate Commissioner, stating the plaintiff has encroached his land. But there is no counter claim in the written statement of the Defendant with regard to title declaration or mandatory injunction. In this regard, Hon'ble High Court of Madras has held in **Meenammal v. K.Subramani**, reported in 2019 SCC ONLINE MAD 21018, in para No.10 that,

**"10. When the suit is filed by the plaintiffs seeking the relief of recovery of possession and Mandatory injunction, the measurement of the suit property by way of Commissioner is very much essential. When the plaintiff has furnished the clear picture about the extent of his suit property with four boundaries and the relief is also sought by him is one for declaration injunction and mandatory injunction, the appointment of the Commissioner to measure the same with the help of firka surveyor is very much reasonable."**

On application of the above Judgment to the present case, as the Plaintiff seeks permanent injunction only, and the Petitioner/Defendant has not sought any counterclaim contending that the land belonging to the Petitioners, and that there are boundary or encroachment issues. The possession of the plaintiff whether lawful or not to be decided in the main suit, after trial, and there is no necessity for appointing an advocate commissioner for the present case for collecting evidence for the suit.

10. Hence this court considers that appointing an advocate commissioner in permanent injunction suit would lead to collection of evidence. In the result, this suit is dismissed. No costs.

Typed by me in my laptop, corrections were carried out by me, and the order

was pronounced by me in the open court this is the 05<sup>th</sup> day of June 2025.

**Sd/-J.MADHUMITHA  
District Munsif,  
Ambattur.**

**1).List of Petitioner side Witnesses: NIL**

**2). List of Petitioner side Exhibits: NIL**

**3).List of Respondents side Witnesses: NIL**

**4). List of Respondents side Exhibits: NIL**

**Sd/-J.MADHUMITHA  
District Munsif,  
Ambattur.**