

In the Court of the District Munsif, Sathankulam.

Present. Thiru.M.Siva Rajesh, B.B.A.,L.L.B.,

District Munsif Sathankulam.

Dated:- This the 04th day of December 2025, Thursday.

E.A.No.1/2025

in

E.P.No.1/2025

in

O.S.No.34/2019

Jeyasingh (Age 60),

S/o.Ponniah,

Idachivillai, Arasoor -II Village,

Sathankulam Taluk, Thoothukudi District. ... Petitioner/1st Respondent/1st Defendant

/VS/

1. Kasilingam(Age 74),

S/o. Arumuga Nadar,

Door No.10/49 Poovudaiyarpuram,

Naduvakurichi Village,

Sathankulam Taluk, Thoothukudi District. ... 1st Respondent/Petitioner/Plaintiff

2. Aavin (Age 45),

S/o.Velliah Nadar,

Idachivillai, Arasoor Village,

Sathankulam Taluk, Thoothukudi District ... 2nd Respondent/2nd Respondent/2nd Defendant

Advocate for the Petitioner : Jebasigh Selvin

Advocate for the 1st Respondent: Thiru.M.Vasaharajan

Advocate for the 2nd Respondent : Tmt.Sheeba Irin

Relief :-

This petition has been filed by the petitioner under Order 26 Rule 9 of the Code of Civil Procedure, seeking the appointment of a Court Commissioner to inspect the third schedule property in Execution Proceedings, situated in Survey No. 673/3A1, with the help of a Government Surveyor, prepare a sketch showing only the portion belonging to the petitioner, and submit a report.

2. Case of the petitioner :-

2.1 The petitioner states that in the above execution proceedings, with respect to the second schedule property, the first respondent/petitioner has filed a petition stating that an extent of 2000 sq. ft. in Survey No. 673/3 is situated 10 feet towards the west and 200 feet towards the south. The petitioner further states that the third schedule property, which he purchased, measures only 1197.9 sq. ft. Out of this, during the pendency of the original suit, he sold an extent of 275.48 sq. ft. to one Muthuraj on 19.07.2023 under Document No. 828/2023. It was further stated that, without impleading the Muthuraj as a party in the original suit, the decree and judgment were passed on 27.06.2024. Even in the present execution proceedings, without adding him as a party, the decree-holder has filed the execution petition showing the entire extent of 1197.9 sq. ft. in the third schedule as if it is still available.

2.2 The petitioner further states that in the second schedule, a pathway of 10 feet width and 200 feet length is said to be situated on the southern side of the third schedule property. The petitioner states that when he does not even have 20 feet of land on the southern side of the third schedule property. It was further stated that the alleged 200 feet length does not belong to him and does not extend up to his property. Hence, attempting to take possession of the said 200 feet stretch through this execution petition is neither legal nor justifiable.

2.3 The petitioner further states that out of the total extent of 1197.9 sq. ft. available with him, he has already sold 275.48 sq. ft. to Muthuraj, and now only 922.42 sq. ft. remains with him. However, in the execution petition, the entire extent of 2 3/4 cents in the third schedule property has been shown as if fully available, which is incorrect.

2.4 The petitioner also states that the property description in the third schedule of the execution petition does not correspond to the FGIJ portion shown in the sketch of the original suit, which is not a rectangular plot. When the petitioner presently owns only 922.42 sq. ft., claiming 2000 sq. ft. in the execution petition is neither legally valid nor logically acceptable.

2.5 Hence, the petitioner prays that in the above execution proceedings, a Court Commissioner may be appointed to inspect the third schedule property, have it measured by a Government Surveyor, prepare a sketch of only the portion actually belonging to him, and submit a report. If this petition is not allowed, the petitioner/first respondent/first defendant will suffer irreparable hardship and loss.

3. Counter Statement of 1st Respondent:-

3.1 The respondent contends that the petition is not maintainable in law or on facts. It was stated that in the main suit, as per this Court's earlier order, an Advocate Commissioner inspected and measured the suit properties with the help of a surveyor on 04.05.2019 after giving due notice. The Commissioner's report clearly states that although the petitioner purchased only 2.75 cents under the registered sale deed dated 24.09.2001, he is actually enjoying 4.94 cents, including the second schedule pathway.

3.2 The respondent further states that in the main suit, the petitioner repeatedly failed to file a written statement despite several adjournments, and when the petitioner's counsel reported "no instructions," court notice was issued. Even after receiving notice, the petitioner did not appear, resulting in an ex parte order on 27.01.2021 and an ex parte decree on 29.03.2022. In the subsequent execution proceedings, the petitioner again failed to appear and took no steps to set aside the ex parte decree for more than three years.

3.3 The respondent also points out that the second defendant, after appearing in execution proceedings, filed an application to condone a delay of 264 days; this was allowed with conditions, and the ex parte decree was set aside on 01.12.2023. After a full trial, the suit was finally decreed in favour of the respondent on 27.06.2024. Meanwhile, the petitioner has filed an unregistered appeal with a delay petition (IA No. 69/2025), which remains pending.

3.4 The respondent states that the petitioner has intentionally avoided participation throughout the proceedings with the sole motive of delaying the case, and stated the present application is malafide and fraudulent, and granting any relief would cause irreparable harm to the respondent. The petitioner, having no right or title over the petition schedule property, has neither a prima facie case nor balance of convenience in his favour. Hence, the petitioner is not entitled to the relief sought.

4. Analysis and findings of this court :-

4.1 Heard. Record Perused. On perusal, this Court is of the view that the primary dispute in the present application revolves around the exact extent and location of the petitioner's remaining portion in the third schedule property and the accuracy of the property description furnished in the execution petition.

4.2 The petitioner contends that he presently owns only 922.42 sq. ft., having sold 275.48 sq. ft. to one Muthuraj during the pendency of the suit, and therefore the execution petition incorrectly proceeds on the assumption that the entire 1197.9 sq. ft. continues to remain with him. He also disputes the correctness of the claim that a 10-foot wide and 200-foot long pathway lies adjacent to his property, asserting that such extent neither belongs to him nor is traceable to his boundary. On this basis, the petitioner seeks a fresh measurement by appointing a Court Commissioner with the assistance of a Government Surveyor.

4.3 Per contra, the respondent argues that a detailed measurement was already carried out by an Advocate Commissioner in the main suit on 04.05.2019, after due notice to all parties, and the Commissioner's report clearly records that the petitioner is enjoying an extent larger than what he purchased. The respondent also points out the petitioner's continuous non-appearance and the repeated ex parte orders, submitting that the present application is only an attempt to delay execution of a decree that has attained finality.

4.4 Considering the facts on hand, this Court notes that the grievance raised by the petitioner specifically concerns the current physical availability and boundaries of the third schedule property, particularly after alienating a portion during the pendency of proceedings. The earlier Commissioner's report pertains to the factual position as on 2019 and does not reflect the subsequent sale deed dated 19.07.2023 or the petitioner's present

claim of reduced extent. The correctness of the extent sought to be delivered in execution can be verified only upon an accurate and updated physical inspection. Since the execution must conform strictly to the decree and cannot extend to any area beyond what is legally deliverable, a fresh measurement to ascertain the petitioner's actual holding becomes necessary to avoid potential injustice.

4.5 In these circumstances, and in order to ensure clarity, prevent boundary disputes, and secure proper execution of the decree, this Court finds that appointment of a Commissioner with the assistance of a Government Surveyor is required. Such appointment would not prejudice the respondent but will assist the Court in ascertaining the true factual position.

In the result, the petition is allowed.

Under these circumstances, **Tmt.S.Roselin, Advocate** is appointed as commissioner to this petition mentioned purpose. The commissioner/Advocate is directed to inspect the suit property with due notice to both parties and note down the physical features of suit property on the date of his/her visit on the points raised by both the counsels/parties. If any need or request of parties / counsels, the Commissioner/Advocate take the necessary assistance of qualified surveyor or Taluk Surveyor for the purpose of measurement of suit property and to submit a report with plan showing their nature, extent, and any encroachments therein. This court has fixed the remuneration of **Rs.12,000/-** (Twelve thousand rupees only) to the Advocate commissioner. The Petitioners shall be paid the remuneration to the Advocate Commissioner directly on or before 11.12.2025. If the amount is not paid, the petition stands dismissed without any further reference. Call on 02.01.2026.

Dictated to the Steno-Typist, typed by her, corrected, and pronounced by me in open court on this the 04th day of December, 2025.

District Munsif,
Sathankulam

Petitioner side witness and documents -Nil

Respondents side witness and documents -Nil

District Munsif,
Sathankulam

District Munsif Court,Sathankulam,
EA.No.01/2025 in
EP.No.01/2025 in
O.S No.34/2019
Fair/Draft Order
Dated : 04.12.2025