

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 20th day of August 2025, Wednesday.

IA.No.32/2025

in

O.S.No.87/2023

V.Subbaiah (Age 51),

S/o. Velkonar,

North Street, Door.No.140,

Kandukondan Manickam,

Pazhankulam Village,

Sathankulam Taluk, Thoothukudi District.

..... Petitioner/Plaintiff

VS

S.Sekar (Age 50),

S/o. Subbaiah konar,

Door.No.124, Kandukondan Manickam,

Pazhankulam Village,

Sathankulam Taluk, Thoothukudi District.

.....Respondent/Defendant

Advocate for the Petitioner: Thiru.M.Alagu Ramakrishnan

Advocate for the Respondent : Thiru.A.Joe Jegadesh

1. Relief :

1.1 This petition was filed by the petitioner under order 26 Rule 9(3) r/w 151 CPC to appoint an advocate commissioner to inspect the suit scheduled property and note down it's physical features with the help of surveyor.

2. Case of the Petitioner:

2.1 The petitioner, being the plaintiff in the main suit, submitted an application for appointment of an Advocate Commissioner to measure the suit property. Pursuant to the court's order, the commissioner along with a surveyor inspected the property on 26.10.2024,

where a survey stone was identified at Point B in Natham Survey No.266, Palankulam Village. Due to obstruction caused by trees, the survey could not be completed on that day.

2.2 Subsequently, after removal of the trees, measurement was resumed on 23.11.2024, commencing from Point B towards Point C. However, no survey stone was found at Point C. The petitioner raised objections to the commissioner's report, contending that identification of the survey stone at Point C is crucial for proper measurement of the suit property, which is necessary to substantiate his claim.

2.3 Accordingly, the petitioner prays for the appointment of an Advocate Commissioner afresh to identify Point C and carry out proper survey and measurement of the suit property.

3. Case of the respondent :

3.1 The respondent denies the petitioner's allegations, stating that despite two days of search, no further survey stones could be found. Consequently, the survey was conducted based on old buildings and permanent structures, a method accepted by the petitioner and his counsel at that time. Measurements were carried out from adjoining lands in Survey Nos. 550/3I and 550/3J, which tallied with the field map, and the 2nd suit property was measured accurately. The report revealed no encroachment by the respondent; rather, it was the petitioner who had encroached upon the 2nd suit property by constructing part of his house, as recorded by the Advocate Commissioner under the marking "BGDH." The respondent alleges that the present petition is only intended to delay proceedings and harass him. He, therefore, prays for dismissal of the petition.

4. Points for consideration :

(i) Whether the absence of a survey stone at Point C renders the Commissioner's survey report incomplete or unreliable ?

(ii) If so whether a fresh appointment of an Advocate Commissioner is necessary for the just adjudication of the suit ?

5. Findings of this court :

5.1 The Hon'ble High Court of Madras held that ***R. Pankajam v. C. Subramanian*** held that a Commissioner's report should not be scrapped lightly and can only be set aside

if it is biased, irregular, or outside the scope of the warrant. Otherwise, it remains admissible and must be scrutinized at the trial stage.

5.2 Considering the aforesaid principles in mind, let's scurtnize whether there is a need for re-issue of an advocate commissioner. From the records it was evident that a survey stone was found at Point B in Natham Survey No.266, but no corresponding stone was traceable at Point C despite earnest efforts. The non-availability of a stone at Point C does not by itself vitiate the survey proceedings, provided alternate methods of measurement are permissible in law and reasonably adopted. Further from the report it was evident that the Advocate Commissioner, with the assistance of the surveyor, proceeded to measure the adjoining lands in Survey Nos. 550/3I and 550/3J, which tallied with the field map. Thereafter, the survey of the suit property was continued from those fixed points. Such method of survey, based on permanent structures and adjoining survey numbers, is an accepted mode when boundary stones are unavailable.

5.3 The Commissioner's report further records that the respondent has not encroached upon any portion of the suit property. On the contrary, the petitioner has extended his construction into the 2nd suit scheduled property, which is marked as "BGDH" in the report. Such a categorical finding, supported by survey and field correlation, cannot be brushed aside lightly. It is settled by precedent that a Commissioner's report, though not binding, constitutes valuable evidence and should not be set aside except on clearly defined and sufficient grounds. No such grounds have been demonstrated in the present case.

5.4 Considering the aforesaid reason, and principles laid down in ***R. Pankajam v. C. Subramanian*** , **this court dismiss this petition. No cost.**

Dictated to the Steno-Typist, typed by her, corrected, and pronounced by me in open court on this the 20th day of August, 2025.

District Munsif,
Sathankulam

Petitioner side witness and documents -Nil

Respondent side witness and documents -Nil

District Munsif,
Sathankulam

District Munsif Court, Sathankulam,
IA.No.32/2025in
OS.No.87/2023
Fair/Draft Order
Dated : 20.08.2025