

IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI

Present: Thiru. V. Eshwar, B.E., LL.B.,
District Munsif, Vaniyambadi.

Wednesday, the 03rd day of June, 2026

I.A. No. 04 of 2025
in
O.S. No. 95 of 2020

1. Mahalakshmi

.....Petitioner

Vs

1. Munisamy
2. Sasi (alias) Sasikumar

... ..Respondents

This application coming on 03.06.2026 for final hearing before me, in the presence of Thiru.**C.Shanmuga Ganesan** Advocate for the Petitioner, Thiru.**A.C. Devakumar** Advocate for the Respondents and having perused the petition, Counter herein, and having heard the arguments on both sides, this Court delivers the following:

ORDER

(Petition filed u/s. 75 r/w O.26 R.9 of CPC)

This interlocutory application has been filed by the petitioner/plaintiff under Section 75 read with Order XXVI Rule 9 of the Code of Civil Procedure, 1908, praying for the appointment of an Advocate Commissioner to inspect the

petition schedule property with the assistance of a competent Surveyor, measure the same, note down its physical features, and submit a detailed report and plan before this Court.

SUMMARY OF PETITIONER'S AVERMENTS

2. The petitioner, who is the plaintiff in the main suit, states that he has instituted the original suit for the reliefs of permanent injunction and mandatory injunction against the respondents. According to the petitioner, the suit property belongs to him absolutely by virtue of a patta issued by the Tahsildar. He asserts that he has been in continuous possession and enjoyment of the property from the date of issuance of the patta.

3. It is the case of the petitioner that the respondents, with an intention to encroach upon his lawful property, have been continuously trespassing and causing disturbances. The petitioner alleges that the respondents have recently encroached upon a portion of his land measuring 3 feet in width and have hastily erected a structure using hollow bricks. To undo this unlawful encroachment and remove the unauthorized wall, the petitioner has also sought the relief of a mandatory injunction in the main suit.

4. The petitioner further states that the respondents are falsely claiming the suit property as belonging to a local temple. According to him, the suit

property is situated in Survey No. 1/7, whereas the temple is located in an entirely distinct and separate land bearing Survey No. 1/8. To demonstrate that the properties are distinct, the petitioner relies heavily on the oral testimony of his third witness, PW-3 (Venkatesan, son of Thangavel), and Exhibit A7, which is an official communication issued by the Hindu Religious and Charitable Endowments (HR&CE) Department dated 05.07.2022. He contends that Exhibit A7 explicitly clarifies that the temple land and the suit property are entirely separate identities.

5. The petitioner submits that in order to establish the exact extent of encroachment, the location of the hollow brick wall built by the respondents, and the actual physical realities of the site, a local investigation is indispensable. He states that unless an Advocate Commissioner visits the spot, measures the property with a qualified Surveyor, and submits a report, it will be impossible for him to conclusively prove the encroachment and secure the reliefs sought in the suit. Hence, he has filed this application.

SUMMARY OF THE RESPONDENTS' COUNTER AVERMENTS

6. The respondents have strongly opposed the application, characterizing it as a speculative and legally unsustainable attempt to delay the court proceedings. They deny all the allegations levelled in the petition and contend

that the burden lies squarely on the petitioner to prove his independent assertions.

7. The respondents state that the main suit is currently listed for further evidence after the petitioner examined three witnesses. They point out that during the trial, the petitioner had previously filed an application on 19.09.2023 to implead a third defendant, which was extensively heard and subsequently dismissed by this Court on 05.11.2025. Following the dismissal, the matter was adjourned on multiple occasions to enable the petitioner to produce further evidence. It is contended that the petitioner, having failed to utilize those opportunities, has now moved this application at the tail end of the trial when a final opportunity was granted, merely to stall the disposal of the suit.

8. It is further contended by the respondents that the petitioner has filed the suit purely for injunction without seeking a comprehensive relief of declaration of title, which is fatal since the property's identity and ownership are intensely disputed. They deny having carried out any illegal construction or encroachment. The respondents argue that since the petitioner himself claims that they are asserting the temple's rights over the property, the failure to implead the temple or its administration as a party to the suit makes the litigation incompetent. They also highlight that the petitioner has deliberately omitted the specific boundaries (Chekkubandhi) of the temple land to conceal material facts.

For these reasons, the respondents pray for the dismissal of the application with costs.

EVIDENCE ADDUCED AND ARGUMENTS ADVANCED

9. No oral evidence was separately adduced for this interlocutory application.

10. The learned counsel for the petitioner argued that there is a clear dispute regarding the boundary and identity of the properties located in Survey No. 1/7 and Survey No. 1/8. It was submitted that the Advocate Commissioner's report, accompanied by a Surveyor's plan, will not decide the title but will merely bring the existing physical facts and dimensions to the notice of the Court, which is necessary to minimize oral arguments and provide clarity on the alleged 3-foot encroachment.

11. Conversely, the learned counsel for the respondents forcefully argued that the petitioner is attempting to collect evidence through the agency of the Court to patch up gaps in his case. It was urged that the suit has been pending for a considerable time, and after the dismissal of the impleading application in November 2025, this petition has been introduced solely as a dilatory tactic. The respondents maintain that a local commissioner cannot be appointed to ascertain

who is in possession or to create a case for a plaintiff who has failed to seek a declaration of title.

POINT FOR DETERMINATION

12. The single, precise point that arises for consideration in this application is: *“Whether the appointment of an Advocate Commissioner to measure the petition schedule property with the assistance of a Surveyor is necessary and justified in the facts and circumstances of the case, or whether it amounts to an attempt to gather evidence?”*

DISCUSSION AND REASONS FOR DECISION

13. This court has given its anxious consideration to the rival pleadings, the legal arguments advanced on both sides, and the underlying records of the suit made available at this stage. The petitioner seeks a local inspection to identify whether a hollow brick structure has been built inside his patta land in Survey No. 1/7 and to mark out the boundaries separating it from the temple land in Survey No. 1/8. The respondents object, stating that the application is belated, lacks a prayer for declaration, and is an indirect mechanism to collect evidence.

14. Before entering into the factual matrix, it is necessary to examine the legal landscape governing Order XXVI Rule 9 of the Code of Civil Procedure. The purpose of appointing an Advocate Commissioner for local investigation is not to unearth evidence for a party who is too lazy to produce it, nor is it to determine the factum of actual physical possession, which must be proved by standard oral and documentary evidence before the Court. However, where there is a specific dispute regarding the identity of an immovable property, or an allegation of overlapping boundaries, or a precise claim of physical encroachment over a narrow strip of land, a local investigation becomes highly useful. A view from the ground, supported by an official scientific measurement by a revenue Surveyor, provides the Court with an accurate structural backdrop, preventing arbitrary guesswork.

15. The record shows that the petitioner relies on a patta for Survey No. 1/7 and asserts his possession over it. On the other hand, the respondents raise a defense that the disputed area belongs to a temple situated in Survey No. 1/8. The petitioner has examined three witnesses, and during the trial, Exhibit A7, an official reply from the HR&CE Department, was brought on record through PW-3. This document prima facie suggests that Survey No. 1/7 and Survey No. 1/8 are distinct numbers. The crux of the dispute is not just an abstract question

of title; it is a physical reality question—whether the 3-foot hollow brick construction stands inside Survey No. 1/7 or inside Survey No. 1/8.

16. When a suit involves a boundary dispute or an alleged structural encroachment over a narrow piece of land (in this case, 3 feet), the Hon'ble Madras High Court has repeatedly held that an Advocate Commissioner is the most appropriate remedy to clarify the topography. Oral descriptions given by witnesses sitting in the box can rarely give a trial court the precision required to draft an enforceable decree for mandatory injunction. If the decree is to be unambiguous, as mandated by the general principles of civil procedure and highlighted in recent judicial guidelines on property dimensions, the exact spot of the construction relative to the survey line must be established.

17. The respondents have raised a strong objection regarding the timing of this application, pointing out that it was filed after the dismissal of an impleading application on 05.11.2025 and when the case was at the stage of further evidence. While it is true that parties must be diligent, procedural delays alone cannot defeat a step that is essential for a just decision in the suit. The appointment of a commissioner does not prejudice the respondents because they will have every opportunity to be present during the inspection, participate in the survey, and file their objections to the report. The report will not automatically

decree the suit; it will merely be an item of evidence to be evaluated along with the oral testimonies of the witnesses.

18. Under Sections 101 and 102 of the Indian Evidence Act, 1872, the burden of proving the encroachment remains firmly on the petitioner. By appointing a commissioner, the Court is not discharging the petitioner's burden or collecting evidence of possession on his behalf. The Commissioner will simply measure the ground using fixed revenue survey points. This scientific verification will conclusively show whether the respondents' construction has spilled over into Survey No. 1/7 or stays within Survey No. 1/8. Therefore, we are of the considered view that a local inspection by an Advocate Commissioner with a certified Surveyor will save substantial court time, prevent a multiplicity of proceedings, and provide a clear picture for determining the final reliefs.

RESULT

19. In the result, this Interlocutory Application is allowed on the following terms:

- 1) **Mr.A.ARAVIND RAJ, B.A.,LL.B.**, Advocate **MS/1110/2019**, is hereby appointed as the Advocate Commissioner to visit, inspect, and map the petition schedule property.

- 2) The Advocate Commissioner shall secure the assistance of a competent and qualified Revenue Surveyor from the local jurisdiction to measure the property precisely.
- 3) The Advocate Commissioner shall, after due notice to the learned counsel on both sides, visit the suit property and, with reference to the Field Measurement Book sketch obtained from the office of the jurisdictional Tahsildar and from the Office of the Surveyor concerned, measure the suit property comprised in Survey No. 1/7, ascertain its present physical features, identify the hollow-brick wall said to have been put up by the respondents, fix its exact location with reference to the boundary between Survey No. 1/7 and the adjoining Survey No. 1/8, prepare a rough sketch in token of the measurement, and file his report along with the rough sketch before this Court.
- 4) The initial remuneration of the Advocate Commissioner is fixed at Rs.5000, which shall be paid directly by the petitioner/plaintiff and that of the qualified surveyor at Rs. 1,000/- (Rupees One Thousand only), which shall be paid directly to the surveyor respectively at the time of the field visit.
- 5) The Advocate Commissioner shall issue a prior written notice to both the parties or their respective counsel on record, detailing the exact date and

time of the proposed local inspection, so that the inspection is carried out in the presence of both sides.

- 6) The Advocate Commissioner is directed to execute the commission work with due diligence and submit a comprehensive report along with a detailed surveyor's plan and field sketches, within four weeks from the date of the field inspection.
- 7) There shall be no order as to costs..

Directly typed by me in my official laptop, corrected and then Pronounced by me in open Court, this the 03rd day of June, 2026.

**DISTRICT MUNSIF,
VANIYAMBADI.**

APPENDIX

Petitioner's Side Witnesses: NIL

Documents Marked On behalf of the Petitioner: NIL

Respondent's Side Witnesses: NIL

Documents Marked On behalf of the Respondent: NIL

**DISTRICT MUNSIF,
VANIYAMBADI.**