

**BEFORE THE COURT OF THE DISTRICT MUNSIF AT
VANIYAMBADI, TIRUPATTUR DISTRICT**

**Present: Thiru V.ESHWAR, B.E.,LL.B.,
DISTRICT MUNSIF, VANIYAMBADI**

Dated this the 5th day of November, 2025.

I.A. No. 2 of 2021
in
O.S. No. 78 of 2021

Shanmugam,

... Petitioner / Plaintiff

Vs.

1. Devendiran,
2. Akila,
3. Dhanapal,
4. Eazumalai,
5. Thirumali,

... Respondents / Defendants

This Interlocutory Application, coming on this day before this Court for hearing the arguments of the learned counsel Mr.Sanjeevi for the Petitioner and the learned counsel Mr.D.Manikandan for the Respondents, and upon perusing the petition, counter and all other material papers on record, this Court doth pass the following:

ORDER**Case Overview**

1. This Interlocutory Application has been filed by the petitioner, who is the plaintiff in the main suit, under the provisions of Order 26 Rule 9 of the Code of Civil Procedure, 1908. The relief sought is for the appointment of an Advocate Commissioner to conduct a local inspection of the suit schedule property, with the assistance of a Birka Surveyor and the concerned Village Administrative Officer (V.A.O.), to note down the physical features thereof and to submit a report along with photographs.

2. The main suit in O.S. No. 78 of 2021 has been instituted by the petitioner/plaintiff for a declaration of his easementary right by prescription and necessity over the suit schedule property, which he describes as a cart track, and for a consequential permanent injunction restraining the respondents/defendants, their men, and agents from interfering with his peaceful possession and enjoyment of the said cart track.

Brief of Petitioner's Averments

3. The crux of the petitioner's case is that the suit schedule property is a cart track, approximately 10 feet in width and 46 feet in length, situated in Survey Nos. 86, 87, and 97/3A1 of Ramanayakkanpettai Village. It is averred that this track provides the sole access from the Ramanayakkanpettai to Avarankuppam main road to his ancestral agricultural land in S.No. 97/2. The petitioner claims that he and his family have been enjoying this cart track uninterruptedly for over 40 years for transporting manure, tractors, lorries, and agricultural produce. He thus claims an easementary right both by prescription and by necessity. The petitioner alleges that the respondents, who are adjacent landowners, attempted to obstruct his usage on 03.05.2021 and 15.07.2021, leading to a police complaint. It is contended that a local inspection by a commissioner is essential to note the physical existence and features of the cart track to render fair justice.

Brief of Respondent's Counter-Averments

4. The respondents, in their counter, have vehemently refuted the petitioner's claims. They contend that the application is frivolous, malicious, and an abuse of the process of law. The primary defence taken by the respondents is that the

alleged cart track, as described by the petitioner, does not exist and has never existed. It is completely false that he has been enjoying a non-existent cart track for 40 years and that a cart track never existed in the petition property at any point in time. They further allege that the petitioner has suppressed material facts, specifically that the petitioner has alternative access to his land in S.No. 97/2 through other lands belonging to him. The respondents also make mention of a police complaint dated 04.05.2021 lodged by the 2nd respondent against the petitioner for trespass. They pray for the dismissal of the application, asserting it is an attempt to gather evidence.

Evidence on Record

5. The documentary evidence at this interlocutory stage consists of the affidavit of the petitioner, the rough plan filed therewith, and the counter filed by the respondents. No oral evidence has been adduced by either party for the purpose of this application.

Arguments Advanced

6. The learned counsel for the petitioner reiterated the averments in the petition

and argued that when the physical features of a property, especially the existence of a pathway, are in dispute, the appointment of an Advocate Commissioner is the most appropriate measure to assist the Court in understanding the ground reality. It was submitted that the inspection is not for collecting evidence but for elucidating the matter in dispute. The learned counsel for the respondents argued that the application is a veiled attempt to fish for evidence, which the petitioner himself must prove at trial. It was contended that a commissioner cannot be appointed to create evidence of a pathway whose very existence is denied.

Point for Determination

7. Upon a careful consideration of the pleadings and the submissions of both learned counsels, the sole point that arises for determination in this application is:

- *Whether the petitioner has made out a prima facie case necessitating the appointment of an Advocate Commissioner under Order 26 Rule 9, C.P.C., for the purpose of elucidating the matter in dispute?*

Discussion and Analysis

8. This application is filed under Order 26 Rule 9 of the C.P.C., which empowers the Court to issue a commission for local investigation. The provision reads: "In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute... the Court may issue a commission..." The primary object of a local investigation is not to collect evidence which can be adduced by the parties, but to obtain evidence from the spot which, by its very nature, cannot be brought before the Court. It is intended to assist the Court by providing a more accurate understanding of the physical features, identification, location, or boundaries of a property.

9. In the instant case, the *lis* between the parties hinges on a fundamental and irreconcilable question of fact: the very existence of the suit cart track. The petitioner asserts its existence and long usage; the respondents flatly deny it, claiming it is non-existent. This is not a mere dispute over the *width* or *length* of a path, but over its *existence* itself. The petitioner has filed a rough plan, which the respondents label as self-serving. The respondents, in their counter, allege the

petitioner has concealed an alternative pathway.

10. When such diametrically opposing assertions are made regarding the physical state of an immovable property, the Court cannot be expected to adjudicate the dispute in a vacuum, relying solely on the oral testimony of the parties which will inevitably be self-serving. The report of an independent, Court-appointed officer, who visits the spot and records the *status quo*, becomes invaluable. Such a report will not, by itself, prove the petitioner's case—the petitioner must still establish his claim of easementary right by prescription and necessity through comprehensive evidence at trial. However, the report will elucidate the central matter in dispute: whether there is, on the ground, a physical feature corresponding to the alleged cart track, and what the nature of the surrounding properties is, including any potential alternative access.

11. The respondents' objection that the petitioner is attempting to "collect evidence" is noted. It is a settled position of law that a commission cannot be issued to prove possession or to gather evidence that a party must otherwise produce. However, it is an equally settled principle, as affirmed by the Hon'ble High Court of Madras in numerous decisions, that where the identity, location, or

physical features of a suit property are in dispute, the appointment of a commissioner is not only proper but requisite. The commissioner's duty is not to opine on the rights of the parties but merely to be the "eyes and ears" of the Court and report the existing physical features. The dispute at hand falls squarely within this ambit. The assistance of a Surveyor and V.A.O. is also warranted to identify the lands based on revenue records (S.Nos. 86, 97/3A1, 97/2) and to accurately measure the features on the ground.

12. Having regard to the stark contradiction in the pleadings regarding the physical existence of the suit pathway, this Court is of the considered opinion that a local investigation is requisite and proper for the purpose of elucidating this central matter in dispute. Denying the application would force the Court to rely exclusively on partisan oral evidence regarding a physical fact. Allowing the application, on the other hand, will bring on record an impartial report of the ground reality, which will aid the Court in rendering a just and effective decision in the main suit. The balance of convenience thus lies in favour of appointing a commissioner.

Result

13. In the result, this Interlocutory Application is **allowed**.

(a) Thiru. R.Rohininathan [MS/1377/2016], Advocate, Vaniyambadi, is hereby appointed as the Advocate Commissioner.

(b) The Advocate Commissioner shall, after giving due notice to both the petitioner and the respondents, visit the suit schedule property and the adjoining lands mentioned in the pleadings.

(c) The Commissioner shall be assisted by the Taluk Surveyor, Natrampalli, and the Village Administrative Officer of Ramanayakkanpettai Village, who are hereby directed to assist the Commissioner with revenue records for the identification of Survey Nos. 86, 87, 97/3A1, and 97/2 and in measuring the suit property.

(d) The Commissioner shall note the physical features of the suit schedule property, specifically noting whether there exists a cart track as alleged, and

if so, its approximate width, length, and physical condition. The Commissioner shall also note the nature of the petitioner's property in S.No. 97/2 and the availability, if any, of other access routes.

(e) The Commissioner is at liberty to take photographs and to draw a rough sketch, which shall form part of the report.

(f) The petitioner shall pay an initial remuneration of Rs. 7,000/- (Rupees Seven Thousand only) directly to the Advocate Commissioner. The petitioner shall also bear all incidental charges for the execution of this warrant of commission.

(g) The Advocate Commissioner shall execute the warrant and file a detailed report, along with the sketch and photographs, into this Court on or before 17.12.2025.

For the report of the Commissioner, call on 17.12.2025.

Directly typed by me in my official laptop, corrected and pronounced by me in the Open Court, this the 4th day of November 2025.

**DISTRICT MUNSIF,
VANIYAMBADI.**

ANNEXURE

List of witnesses examined and Documents marked
on the side of Petitioner and Respondents :NIL

**DISTRICT MUNSIF,
VANIYAMBADI.**