

IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI

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

Dated this the 21th day of July, 2026

(2057 திருவள்ளூர் ஆண்டு, ஸ்ரீ பராபவ வருடம் , ஆடி திங்கள் 5 ம் நாள்)

I.A. No. 04 of 2026

in

O.S. No. 88 of 2020

Perumal

...Petitioner/Plaintiff

Vs

1. Mani
2. Baskar
3. Tirumurugan
4. Shanmugam(died)
5. Saravanan
6. Sub-registrar, Tirupattur
7. Kasthuri
8. Poongodi
9. Rajalakshmi
10. Rajapandiyan

...Respondents/Defendants

This petition coming on 21.07.2026 for final orders before me in the presence of learned counsel Mr. **K.Boopathi** for the petitioner and learned counsel Mr. **R.Radhakrishnan** for the 3rd Respondent and R4-died and notice to R1, R2, R5 to R10 was dispensed since already set ex parte in suit, and upon perusing the petition, Counter and other material records in this case, this Court doth pass the following:

ORDER

(Petition filed U/O.26 R.9 of CPC)

The petitioner, who is the plaintiff in the main suit, has preferred this application under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908, seeking the appointment of an Advocate Commissioner to inspect the petition mentioned property with the assistance of a revenue

surveyor, to measure the same, note down its physical features, current standing crops, boundaries, and surrounding local features, and to submit a comprehensive report to this Court.

Gist of the Petition:

2. The main suit has been instituted for a declaration that a General Power of Attorney dated 02.04.2013, executed by the first respondent in favor of the second respondent, and a subsequent Sale Deed dated 26.07.2013, executed by the second respondent as power agent in favor of the third respondent, are fraudulent, illegal, and null and void. The petitioner further seeks a permanent injunction to protect his peaceful possession.

3. The petitioner asserts that the suit property was originally acquired from one Devayaniammal. Out of fraternal love, the sale deed was executed jointly in the names of the petitioner and his elder brother, the first respondent. However, it is the case of the petitioner that he alone paid the consideration and has remained in exclusive, undisturbed physical possession and personal cultivation of the land from the date of purchase till today.

4. The petitioner contends that the first respondent, without his knowledge or consent, secretly executed the General Power of Attorney, and on the strength of that document, a fraudulent conveyance was made to the third respondent under the guise of transferring possession. The petitioner asserts that he continues to cultivate the land annually and that a local investigation by an Advocate Commissioner is absolutely necessary to record the standing crops,

local surroundings, and boundary measurements to facilitate the proper trial of the suit.

Gist of the counter of R3

5. The third respondent has strongly resisted this application by filing a detailed counter statement. It is contended by the third respondent that the present application is a clear abuse of judicial process, introduced at the trial stage solely to collect evidence regarding physical possession. The third respondent denies that the petitioner has been in exclusive possession or that the underlying transactions are fraudulent.

6. On the contrary, the third respondent claims to be a bona fide purchaser for valuable consideration, having directly purchased an extent of 2.66 acres in Survey No. 699 via a registered Sale Deed dated 28.06.2013 (Document No. 6256/2013) from the first respondent. Since the date of purchase, the revenue records, including Chitta and Adangal extracts, have been duly mutated in the third respondent's name, confirming his actual physical cultivation.

7. Furthermore, the third respondent points out a material suppression of fact by the petitioner. It is stated that the petitioner himself had executed a registered Settlement Deed in favor of his wife, Ramamani, on 16.09.2013 under Document No. 8925/2013, in respect of 2.66 acres within the same Survey No. 699 with specific boundaries. The third respondent contends that the petitioner's claim of exclusive possession over an inflated extent of 6.16 acres is completely imaginary and unsupported by any revenue record. Since the entire dispute

centers around prior possession in an injunction framework, the third respondent argues that the petitioner cannot utilize an Advocate Commissioner as a tool to fish for evidence or to bolster a weak case, and prays for the outright dismissal of the petition.

POINT FOR DETERMINATION

8. Whether the petitioner has made out a valid and sufficient ground under Order XXVI Rule 9 of the CPC, for the appointment of an Advocate Commissioner to measure the property and note down physical features, or whether the application is an impermissible attempt to collect evidence of physical possession?

EVIDENCE ADDUCED

9. No oral or documentary evidence has been formally marked by either party for the purpose of this interlocutory application.

DISCUSSION AND REASONS FOR DECISION

10. Heard both sides. Perused records. This Court has given its anxious consideration to the rival submissions advanced on both sides and has carefully perused the available case records.

11. The petitioner seeks a local inspection by an Advocate Commissioner primarily to measure the land in Survey No. 699, verify its boundary dimensions, and note down the current agricultural operations. The primary relief claimed in the main suit is a declaration to invalidate a registered General Power of Attorney and a subsequent Sale Deed, alongside a consequential

permanent injunction to protect possession.

12. It is the specific case of the third respondent that he is the rightful owner in possession of 2.66 acres out of the total extent in Survey No. 699 by virtue of a valid registered sale deed, and that the revenue entries stand mutated in his name. It is further brought to light that the petitioner has settled a matching portion of 2.66 acres in the very same survey number on his wife. The core controversy between the parties at this stage undeniably revolves around physical possession and the exact extent of land each party actively occupies on the ground.

13. The legal objective of appointing an Advocate Commissioner is to conduct a local investigation only when the Court deems it requisite or proper for the purpose of clarifying or elucidating a matter in dispute. It is an extraordinary procedural tool meant to assist the Court in capturing physical data that cannot be effectively brought on record through oral or documentary evidence alone. The law is well-settled by long lines of binding precedents from the Hon'ble Madras High Court that an Advocate Commissioner cannot be utilized as an instrument for a fishing expedition or for the gathering of evidence that a party can and should produce themselves.

14. In a suit involving an injunction simpliciter or a dispute deeply rooted in the factum of physical possession, the burden of proof lies squarely on the party asserting such possession. Physical possession and active agricultural cultivation are transient facts that must be established by the litigant through

proper oral testimonies and statutory revenue records, such as Kist receipts, Chitta, and Adangal extracts.

15. It is well settled that the appointment of an Advocate Commissioner to note down physical features or crops in an injunction dispute often amounts to an impermissible collection of evidence, which cannot be encouraged. If a Court Commissioner is directed to inspect the land to note down what crops are standing or who is ploughing the field, it essentially delegates the judicial function of fact-finding onto an observer, thereby allowing one party to bypass their legal obligation to lead substantive evidence.

16. If the petitioner is indeed carrying out personal cultivation regularly over the claimed 6.16 acres, it is completely open to him to establish that fact by producing the relevant Adangal extracts for each corresponding Fasli year before the trial court. A physical inspection cannot act as a substitute for missing revenue documents.

17. Therefore, this Court is of the considered view that the request to note down physical features, boundaries, and standing crops at this stage is premature and would clearly amount to an impermissible collection of evidence to prove possession. The petitioner must establish his title and possessory claims independently during the trial. Consequently, the application lacks bona fide legal necessity and does not satisfy the statutory thresholds of Order XXVI Rule 9 of the Civil Procedure Code.

RESULT

18. In the light of the detailed discussions, reasons, and findings recorded above, this Court is satisfied that the present application for the appointment of an Advocate Commissioner to measure the property and note down standing crops at the trial stage is an attempt to collect evidence regarding physical possession, which is impermissible under Order XXVI Rule 9 of the Code of Civil Procedure. The petitioner has failed to establish any bona fide legal necessity for a local investigation at this stage of the proceedings.

19. Consequently, this Interlocutory Application is **dismissed**. No costs.

Directly typed by me in my official laptop, corrected and pronounced by me in the Open Court, this the 21th day of July 2026.

**DISTRICT MUNSIF,
VANIYAMBADI.**

APPENDIX

I. Witnesses Examined on behalf of petitioner : Nil

II. Documents Marked On behalf of the Petitioner: Nil

III. Witnesses Examined on behalf of respondents : Nil

IV. Documents Marked On behalf of the respondents: Nil

**DISTRICT MUNSIF,
VANIYAMBADI.**