IN THE COURT OF THE DISTRICT MUNSIF, VANIYAMBADI,

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

Dated this the 27th day of June, 2025

I.A. No. 02 / 2021
in
O.S. No. 116 / 2020

1. Ellammal
2. Karthick
3. Sasikala

Petitioners

Vs

1. Rajalingam
2. Muthukumaran
3. Srinivasan

Respondents

This petition is having been taken on file on 05.10.2021 and came before me for final hearing on 27.06.2025 in the presence of Mr.R.V.Varadharajan, Advocate for Petitioners and Mr.K.Umar, Advocate for Respondents, having stood over consideration till this day and upon perusing the records and hearing the objections, this court this day delivered the following:

ORDER

1. This interlocutory application was filed U/o.26 Rule 9 of CPC,1908 by the petitioners seeking appointment of an Advocate Commissioner to measure the suit property and to note the alleged encroachment by the respondents. This Court, by order dated 03.03.2022, appointed an Advocate Commissioner, who

executed the warrant, inspected the property with due notice to both parties, and submitted a report along with a rough sketch.

2. Both petitioner and respondents have filed objections to the Commissioner's report.

<u>Summary of the Commissioner's Report:</u>

3. The Advocate Commissioner, upon inspection of the suit property, reported that there was encroachment of 5¾ cents with 7 coconut trees and a mango tree in Survey No. 184/2B. The Commissioner identified various survey numbers including 184/2B1, 184/2B2, and 184/2C, and noted the presence of coconut trees and other features on the property. The Commissioner measured the property and submitted measurements with a rough sketch showing the boundaries and encroached portions.

<u>Summary of the Petitioners' Objections:</u>

4. The petitioners have filed detailed objections contending that the Advocate Commissioner made observation in para-3 of his report stating the encroachment is only 5¾ cents with 7 coconut trees and a mango tree in Survey No. 184/2B, but the actual extent of the property with physical features encroached by the respondents in Survey No. 184/2B is more extensive.

5. The Advocate/Commissioner failed to take note of the encroached portion to the extent of 10 cents + 6½ cents totaling 16½ cents with 11 coconut trees, though the petitioners had identified the encroachment made by the respondents.

6. The Advocate/Commissioner failed to survey the encroached portion as identified by the petitioners, despite the petitioners having filed a rough plan along with the plaint. The Advocate/Commissioner has not spelled out in his report the said plaint rough plan and also failed to identify and survey the encroachment with the assistance of the said plaint rough plan.

7. The Commissioner has shown in his report and plan a lesser extent of encroachment which is incorrect, and the petitioners' objection to the report and plan should be considered at the time of appreciation of evidence. The petitioners seek reissue of commission warrant to the Advocate/Commissioner to identify and survey the encroachment in the suit property as stated by the petitioners.

Summary of the Respondents' Objections:

8. The respondents have filed comprehensive objections stating that the Advocate Commissioner's Report along with Plan is devoid of merit and liable to be rejected in-limini, as the Commissioner submitted based on Revenue Records brought by Revenue Officials during the commission, which reflects only 2 survey numbers namely 184/2B and 184/2C.

9. The Advocate Commissioner measured the property not based on Revenue Records brought by Revenue Officials, but chose to rely on Online Survey Numbers which were not forming part of the Revenue Records brought by the Officials.

10. The Advocate Commissioner's Report and measurements are all based on Online Records which were not even measured physically on site. The Report as it stands is nothing but a drawing of portion in the plan, artificially drawn in the existing Field Map of the Revenue Authorities.

11. The Advocate Commissioner deliberately made incorrect mention that Survey Number 184/2B1 extends to 0.54.50 hectares (134.6 acres) standing in the name of Srinivasan and Muthukumaran, whereas the actual computerised patta filed shows a different picture. The Advocate Commissioner ought not to have drawn any line in the Field Map produced by Revenue Authorities since the Commissioner is not authorised to tamper with Revenue Records.

12. The Commissioner submitted that 12 cents of land exists in Survey No. 184/2C, and recorded that petitioners informed that 3½ cents of land was encroached by respondents, but this submission is liable to be viewed seriously.nThe Commissioner's Rough Plan itself establishes that he had not even enquired about the boundaries of the properties pertaining to Survey Nos. 184/2B or 184/2C. The Advocate Commissioner had totally failed in his duty in executing the warrant issued by this Court. The respondents prayed for rejection of the Commissioner's Report.

Analysis and Findings:

13. Heard both sides and perused the Commissioner's report, sketch, and the objections raised by both parties. Upon careful consideration of the materials on record and the submissions made by both parties, this Court finds

that the Commissioner appears to have conducted the inspection in accordance with the warrant issued by this Court. Notice was properly given to both parties, and the inspection was conducted in their presence. The Commissioner submitted his report along with a rough sketch as required.

14. The petitioners contend that the Commissioner failed to note the full extent of encroachment as claimed by them, but the objections are primarily based on their own assertions without sufficient supporting material to demonstrate manifest error in the Commissioner's findings. The Commissioner's assessment was based on his inspection and the materials available during the commission.

15. On the other hand, the respondents have raised substantial objections regarding the Commissioner's reliance on online survey records rather than Revenue Records, and questioned the methodology adopted. However, the Commissioner was required to inspect and measure the property based on available records and ground reality. The objections, while detailed, do not establish any procedural violation or manifest error that would warrant rejection of the entire report.

16. This court observes that the Commissioner has complied with the essential terms of the warrant by conducting inspection with due notice to parties. This court is unable to find any procedural irregularity of substantial nature established in the conduct of the commission.

17. The objections raised by both parties are primarily argumentative and relate to the weight to be given to the report rather than fundamental defects in the commission process. The Commissioner's report, though disputed by parties, appears to be based on ground inspection and available records. The discrepancies highlighted by the parties can be addressed during the trial when the report is considered as evidence.

Conclusion:

18. The Commissioner's report appears to be fair, impartial, and based on local inspection conducted in the presence of parties with due notice. While both parties have raised objections, these objections do not demonstrate any fundamental procedural defect or manifest error that would warrant rejection of the report or ordering a fresh commission.

19. The objections filed by both parties relate more to the appreciation of evidence and the weight to be attached to the Commissioner's findings, which are matters to be considered during the trial of the suit. The parties are at liberty to raise their contentions regarding the Commissioner's report during the trial of the main suit for appropriate consideration by the Court

Result:

20. In the upshot, on the culmination of the foregoing discussions, this court is of the considered opinion that ;

The objections filed by both the petitioners and respondents to the Advocate Commissioner's report are hereby **OVERRULED**.

The Advocate Commissioner's report filed on 14.02.2023 and the accompanying rough sketches are hereby **ACCEPTED.**

This interlocutory application is **CLOSED.**

Directly typed by me in my official laptop, corrected by me, and pronounced in open court on this day, the 27th of June, 2025.

ESHWAR VISWANATHAN
DISTRICT MUNSIF
Digitally signed by ESHWAR VISWANATHAN

District Munsif,
Vaniyambadi.

ANNEXURE:

No witnesses examined and No exhibits were marked on either side.

ESHWAR VISWANATHAN
DISTRICT MUNSIF
Digitally signed by ESHWAR VISWANATHAN

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Vaniyambadi.