

IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,
VELLORE DISTRICT.

Present: **Tr.K.Karthick Asath, B.A.,B.L.,(Hons).,LLM.,**
District Munsif,
Gudiyattam.

Wednesday, this the 04th day of March 2026

I.A.03/2025
in
O.S.No.09/2023

S. Kalaiselvi, W/o.Selvaraj,
Rep.by her General Power Agent,
B.Balakumaran, S/o.Late.Bhoopalan

.... Petitioner/ Plaintiff

// Versus //

1. L. Devendiran
2. E. Jagathammal
3. E. Munisamy
4. E. Deva @ Devaraj

.... Respondents / Defendants

This petition came up on 04.02.2026 before me for final hearing in the presence of Thiru.N.Poonkundran, Advocate for the Petitioner and Thiru.K.M.Boopathi, Advocate for the respondents upon perusing the case records and having stood over for consideration till this day this court delivered the following.

Order

The application filed Under Order 26, Rule 9 and Section 151 of the Code of Civil Procedure Code to appointment of an advocate commissioner to measure and take down the physical features of mentioned 'A' and 'B' schedule properties with the help of Taluk Surveyor of Gudiyattam Taluk and VAO of Ammanangkuppam Village along with

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necessary revenue records and directing the commissioner to file his detailed report with necessary plan and photographs and pass such other orders.

1. The averments of the petitioner in the applications:-

The petitioner submit that the respondents/defendants are third parties to the petition 'A' and 'B' schedule properties, absolute strangers, having no any right at all. Taking advantage of petitioner/plaintiff's loneliness and poverty, the respondents/defendants illegally encroached the petition 'B' schedule property by construction along with their housing building. It is absolute trespass and encroachment against petitioner/plaintiff's property and it is entitled to be redeemed with damages. Hence the present suit. The petitioner submit that the respondents/defendants who are all appearing through their learned counsel, filed written statement and contesting the case as strongly and stoutly denying the petitioner/plaintiff's case as it is all absolute false and they are not encroached any property as alleged. It is further pleaded in their written statement para-7 that, the measurement given in the plaint schedule and in the document of the plaintiff is not at all correct, in fact, the plot number of plaintiff house is 12 and plot No.12 is not in proper shape, one side of the plaintiff house is not straight line, therefore his entire measurement is not according to the document, if the property is measured by the plaintiff with help of a competent surveyor truth will come out. All the averments made in the written statement are utter false and denied. In order to enlighten the facts and truth to this Hon'ble court, an advocate commissioner have to be inspected the petition mentioned 'A' and 'B'

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schedule properties and measure the same with the help of Taluk level Surveyor with the assistance of concerned VAO and revenue records namely chitta, adangal and field map and then file his detailed report with necessary plan and photographs.

2. The averments of the respondent in the application:-

The respondent submits that they have not encroached the property at any point of time. Since there is no encroachment, there is no need to appoint an advocate commissioner and measure the property. The respondent further submit that there are enough documents to show that the respondents have not encroached the property, hence this present application need not be allowed and there is no need to measure the property. The petitioner has filed the present application with malafide intention only to threat the respondents. The application for appointment of advocate commissioner to measure the suit property with the help of surveyor as such filed by the petitioner is not at all sustainable either in law or on facts and the petitioner has filed the application for appointment of an advocate commissioner only to drag on the proceedings.

3. Both side enquiry heard.

4. Point for consideration:-

Whether this application is liable to be allowed ?

5. Evidence:-

Neither of the parties to this application have adduced any oral or documentary evidence.

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6. Discussion:-

On considering the submissions made by the both side counsels and perusing the available records this court delineate and proceeds its findings based on the following discussion.

6.1. The petitioner is the plaintiff in the suit. He filed suit against the respondents for declaration of title and delivery of possession by demolishing illegal construction put up by the respondents in the suit property and for damages. While the suit posted for trial the petitioner filed the present petition stating that the suit A schedule property measuring 29-1/2 feet X 33 feet in that the petitioner left 3-1/2 feet X 26 feet in the backyard on the eastern side. The respondents are the adjacent land owners they illegally encroached the 3-1/2 feet X 26 feet B schedule property and constructed along with their house. The respondents themselves stated that if the property is measured by the plaintiff with help of a competent surveyor truth will come out on that the petitioner filed this petition for appointment an advocate commissioner.

6.2. Per contra the respondents filed counter stating that one Saroja obtained patta from the government for the property the same was purchased by the respondents in the year 2009 and constructed house in the year 2010. The respondents not encroached the property and it is need not to measure the property. Only to threat the respondents and drag on the proceedings the present petition is filed.

6.3. On perusing the available records the petitioner filed suit for declaration of title and delivery of possession in respect of B schedule

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property which is part of A schedule property. The suit property plot No.11 is situated on the western side of respondents property plot No.30. The petitioner left 3-1/2 feet into 26 feet on the backyard of plot No.11 but the respondents encroached that property and constructed house. The petitioner at present filed the present petition to measure the suit property with the help of surveyor for enlight the facts. On perusing the written statement filed by the respondents in para 7 they stated that plaintiff house in plot No.12 is not proper shape and plaintiff house is not in straight line and they not encroached the plaintiff property and specifically stated if the property is measured by the plaintiff with the help of the competent surveyor truth will come out. On considering the objections raised by the respondents regarding the physical features and measurement of the suit property this court thinks it is necessary to note down the physical features and measurement of the suit property for deciding the suit. The petitioner shows sufficient cause for allowing this petition. On considering the above discussion this court thinks it is necessary to appoint an advocate commissioner to note down the physical features and measure the suit property to decide issues in a fruitful manner. On that this court inclined to allow this petition.

7. Result :-

As a result this petition is allowed as follows.

1) Advocate, Mr.K.S.Rajkumar (MS.No.3381/2022) is appointed as the commissioner to inspect the 'A' schedule mentioned properties and note down its physical features and measured the 'A' schedule mentioned

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properties with the help of Taluk Surveyor with the aid of the concerned Village Administrative Officer.

2) The petitioner is directed to pay Rs.3000/- directly to the advocate commissioner as advanced remuneration and to deposit Rs.5000/- in court as advocate commissioner remuneration within 2 weeks from the date of this order. The advocate commissioner is entitled to withdraw the remuneration amount after the report becomes final.

3) The commissioner shall inspect the scheduled mentioned property after due notice to all parties.

4) Directing the advocate commissioner to complete the proceedings and file the report along with plan within 2 months from today.

Dictated to Steno typist directly, typed by him corrected and pronounced by me in the open Court on this the 04th day of March 2026.

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Petitioner side Witnesses and Exhibits :- Nil

Respondents side Witnesses and Exhibits :- Nil

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