

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

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

Friday, this the 30th day of January 2026

E.A. 01/2023
in
EP.32/2019
in
OS.No.170/2012

Dhanabakkiyam

.... Petitioner/ D.Hr

// Versus //

1. Datchinamoorthy
2. Amirtha

.... Respondents/ J.Ds.

This petition came up on 21.01.2026 before me for final hearing in the presence of Thiru.G.Ramachandran, Advocate for Petitioner/D.Hr and Thiru.S.Gunasekaran, Advocate for the respondents/J.Ds. and upon perusing the case records and having stood over for consideration till this day this court delivered the following.

Order

Petition filed under Order 26, Rule 9 and Section 151 of Code of Civil Procedure to appointment of advocate commissioner directing him to note down the physical features in the schedule mentioned suit property and to measure the same with the help of Taluk Surveyor and to fix Survey stones and to file a report with plan in court to render justice and to pass such other order.

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

The petitioner is the petitioner in EP.32/2019. The petitioner submit that he filed the above EP for contempt as the respondents and their agents disobeyed the permanent injunction decree. The petitioner further submit that the respondents after filing of the above execution petition for contempt resorted to violence and removed the survey stones for the suit property and caused damages to the standing crops and ridges by attempting to form path in the suit property. The petitioner submit that an Advocate commissioner has to be appointed to note down the physical features in the suit property and to measure the same with help of Taluk Surveyor and fix Survey stones for the suit property that was violently removed by the respondents to render justice.

2. The averments of the counter filed by 1st respondent/J.D.:-

The respondent submit that the petitioner has got the decree and it was not disobeyed by the respondents as alleged by her. The contents of the affidavit filed in support of the execution petition was wrong and the respondents never indulged in unlawful activities on 13.06.2019 as alleged by her. The respondent further submit that the petitioner also has filed a petition E.A.No.61/2019 in this Execution petition for grant of police help, the respondents also filed their detailed counter both the execution petition and police help petition on pending for enquiry from 08.02.2021 onwards and the petitioner was taking time to get on with enquiry in those petitions, having find that the petitioner has got no case. After a long gap of period the petitioner has filed this petition on

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20.07.2023 and it was numbered and notice of hearing was given to the respondents and this petition was posted on 17.10.2023 for filing counter. This petition is filed only with a view to collect evidence to the main case. No such incident took place on 13.06.2019 as alleged in the affidavit filed in support of execution petition. To collect evidence no advocate commissioner can be appointed. Moreover, no advocate commissioner can be appointed to measure and to fix survey stones in legal proceedings of disobedience of injunction order the affidavit filed in support of this petition says that the respondents have resorted to violence and removed survey stones and caused damages to the standing crops. No proof of evidence was enclosed along with this petition and it was silent on what date the alleged incident took place. Mere reading of the affidavit filed along with E.P and the affidavit filed along with the petition in E.A.No.61/2019 will prove that the averments contained in the affidavit filed in support of this petition is false and imaginary and invented only for filing of this petition. No advocate commissioner is appointed to collect evidence and also to fix survey stones. Hence this petition is liable to be dismissed in limini.

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 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. The petitioner filed permanent injunction suit against the respondents in OS.No.170/2012 and the same was decreed on 21.11.2016. Subsequently the petitioner filed contempt EP stating that the respondents 1 and 2 along with others attacked the petitioner and her husband and created obstruction in the property entrance. While the EP pending for enquiry this EA.01 of 2023 is filed by the petitioner. In the E.A. the petitioner stated that the respondents after filing of the above execution petition for contempt resorted to violence and removed the survey stones for the suit property and caused damages to the standing crops and ridges by attempting to form path in the suit property. Hence prayed to appoint advocate commissioner to note down the physical features and measure the same with the help of Taluk Surveyor and to fix Survey stones.

6.2. Per contra the respondents filed counter stating that no such incident is took place, only to collect evidence this petition is filed, even the date of incident also not stated by the petitioner, it is a imaginary allegations only to collect evidence inrespect of EP and to prolong the execution petition.

6.3. On perusing the available records at the time of pending contempt EP this petition is filed by the petitioners stating that the

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respondents removed the survey stones and caused damages to the standing crops and ridges by attempting to form path in the suit property. On perusal the date of the incident was not specified by the petitioners. Number of allegations stated in the affidavit but for considering the same no evidence is adduced by the petitioners.

6.4. It is further submit that the petitioner seeking appointment of advocate commissioner to note down physical features and fix the survey stones in the suit property. While the main E.P for contempt is pending by stating that the petitioners created obstruction in the property, in this stage without disclosing acceptable evidence allowing this petition is a collection of evidence. Which will prejudice to the respondents. The petitioner should prove his execution petition by adduce individual evidence and not by the evidence of advocate commissioner. The petitioner failed to state the date of incident and failed to prove the averments to consider this petition. No sufficient cause is shown to allow this petition at this stage, hence this court not inclined to allow this petition.

7. Result:-

As a result this petition is dismissed without cost.

Dictated to Steno typist directly, typed by him corrected and pronounced by me in the open Court on this the 30th day of January 2026.

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Petitioner side Witnesses and Exhibits :- Nil

Respondents side Witnesses and Exhibits :- Nil

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