

**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 27<sup>th</sup> day of February 2026

**I.A. 05/2024**  
**in**  
**O.S.No.144/2019**

1. Saravanan  
2. Sarankumar  
3. Srinath

.... Petitioners/ Defendants 1 to 3

// Versus //

Sivakumar

.... Respondent/ Plaintiff

This petition came up on 05.02.2026 before me for final hearing in the presence of Thiru.M.V.Jagadeesan, Advocate for the Petitioners, and Thiru.G.Ramachandran, Advocate for the Respondent and upon perusing the case records and having stood over for consideration till this day this court delivered the following.

**Order**

The application I.A.05/2024 has been filed under Order 26, Rule 12(2) and 151 of Code of Civil Procedure 1908 to note down the physical feature and measurement of the petition schedule mentioned property with the help of the Inspector of Surveyor in view of dissatisfactory of the activities of the earlier advocate commissioner and pass such other orders.

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**1. The averment of the petitioner in brief :-**

The petitioner submitted that the petition mentioned property is government promboke land and there is a cart way through promboke land S.No.33/1A going to his patta land S.No.24. The petitioner making use of same for his cart way for past 50 years to reach his patta land and there is no any way going to his land S.No.24. With ulterior motive all are sudden the plaintiff is preventing him to enjoy the common cart pathway. Hence the petitioner have filed a petition to appoint advocate commissioner in IA.03 of 2019 and accordingly advocate commissioner Sri.Subramani is appointed to note the physical features and file report and he has inspected the property but failed to mention the existing cart way which is very clearly visible and everyone is using it as common cart way. The Advocate commissioner also failed to enclose the report of the surveyor who has inspected the property along with him at the time of the inspection. The surveyor would definetly will file a clear sketch for existence of the cart way in the promboke land and it is also found that the activities of the advocate commissioner on the date of the inspection is not satisfactory and he has not only heard our words but also failed to note our points. Its seems that the activities of the advocate commissioner is biased one and on seeing the report itself it is clearly reflected his activity and now the petitioner filing the photos and CD's for the existence of the cart path way in the promboke land. On considering all these things it is just and necessary to appoint the New advocate commissioner to note down the physical feature and measurement of the schedule mentioned property with the help of the inspector of surveyor. The commissioner report will give

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clear picture about the existence of the cart path way which has been under his usage for the past 50 years. Unless the new advocate commissioner is appointed it is difficult to find out the nature of the schedule property and the petitioner will be put to great loss.

**2. The averment of the respondent in brief :-**

The respondent submit that the petitioners have not disputed the physical features and measurements stated by the advocate commissioner Mr.G.Subramaniam in his report in IA.03/2019 in this suit and the petitioners have not conducted any enquiry on the basis of their objections filed for the report of the advocate commissioner in IA.03/2019 and petitioners have not prayed for rejection of the report and plan filed by the advocate commissioner Mr.G.Subramaniyam in IA.03/2019 and the absence of it the petitioners are not entitled for praying to appoint a new advocate commissioner to notedown the physical features of the petition mentioned suit property and to measure the same and hence the petition is not maintainable and liable to be dismissed.

3. Petitioner side enquiry heard. Respondent side enquiry heard and Ex.R1 marked.

**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. On respondent side Ex.R1 is marked. On petitioners side no document is marked.

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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 Petitioners are the defendants in the main suit. The respondent filed OS.144/2019 against the petitioners for permanent injunction. The petitioners after entering in the suit they filed IA.03/2019 for appointment of advocate commissioner to note down the physical features and measure the petition mentioned property. In the said IA was allowed on 13.08.2021 and advocate Mr.G.Subramani appointed as advocate commissioner after inspection he filed his report on 12.09.2024. While the suit pending at the stage of trial the petitioners/defendants filed this present petition under Order 26, Rule 12(2) of Code of Civil Procedure. In the petition the petitioners stated that the petition mentioned suit property S.No.33/1A is a government poromboke land and there is a cart way situated through the promboke land till the S.No.24 patta land of the petitioners. The respondent preventing the petitioners from enjoying the cart way and file the suit against the petitioners. While advocate commissioner appointed in IA.03/2019 to note down the physical features of both Survey numbers but the advocate commissioner failed to mention about the existing cart track and failed to enclose the report of the surveyor. They further submit that the advocate commissioner failed to note the petitioners points and his activity is biased one and his report reflecting his activity. Unless the new advocate commissioner is appointed it is difficult to find out nature of the schedule property.

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**6.2.** Per contra the respondents filed counter stating that the advocate commissioner filed report in IA.03/2019 but the petitioners not conducted any enquiry on the basis of their objections and petitioners failed to pray for rejection of report. Hence they are not entitled for praying to appoint new advocate commissioner. Hence the petition is not maintainable and liable to be dismissed.

**6.3.** On perusal of the available records in this case the petitioners/defendants filed IA.03/2019 for appointment of advocate commissioner to note down the physical features and measure the properties in S.No.33/1A and S.No.24 with the help of surveyor. The case of the petitioners is that S.No.33/1A is a promboke land occupied by the respondents in the promboke land there is a cart way till S.No.24 patta land of the petitioners but the respondent preventing petition to enjoy the cart way hence they filed the advocate commissioner application. The said application allowed on 13.08.2021 by appointing advocate Mr.G.Subramani as a advocate commissioner. After inspection he filed report and plan on 12.09.2024. For his report the petitioners here in filed objections on 23.10.2024 stating that the advocate commissioner filed report without the plan of surveyor and intentionally not disclosed the visible cart way in the suit property and he filed infavour of the respondent on bias. The advocate commissioner filed report by making unnecessary observation beyond the order of this court hence he prayed to reject the report and appoint a new advocate commissioner. While the petitioners filed objection on 23.10.2024 on the same day the said IA was closed. At present the petitioners filed the present petition by highlighting the

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same grounds for appointing new advocate commissioner in view of dissatisfactory of the activities of the earlier advocate commissioner.

6.4. On considering the reasons stated in the present petitioner on perusing the advocate commissioner report dated 12.09.2024 the advocate commissioner stated that he inspected the mentioned properties on 19.03.2022 at the time of inspection in the petitioners property (S.No.24) there is a live crops standing in the property hence they are unable to measure the property by using link chains. It is further submit that while the advocate commissioner directed by this court to inspect the petition mentioned property along with Taluk Surveyor and VAO to note down the physical features and measure the petition mentioned property but the advocate commissioner filed his report without measuring the petition mentioned property and giving observation regarding the possession and the existence of cart way in the respondent property. Even more the advocate commissioner stated that there is no possibility to create cart way through the respondent property. For better appreciation this court here with extracting the relevant portion of the advocate commissioner report:

*மேற்படி பிரதிவாதிகள் நிலம் மற்றும் முனுசாமி நிலம் என்று எனது மாதிரி வரைப்படத்தில் குறிப்பிட்டுள்ள இரண்டு நிலங்களும் காணாற்றில் ஒரு பகுதி போலவே தென்பட்டது. மேற்படி இரண்டு நிலங்களும், எனது மாதிரி வரைப்படத்தில் வாதி அனுபவத்தில் உள்ள அரசு புறம்போக்கு நிலம், வாதியின் பட்டா நிலம் என்று குறிப்பிட்டு உள்ள நிலங்களை விட சுமார் 60 அடி பள்ளத்தில் (Down) உள்ளது. மேற்சொன்ன வாதி அனுபவத்தில் உள்ள அரசு புறம்போக்கு மட்டும் பட்டா நிலம் ஆகிய இரண்டும் மேற்சொன்ன மனுதாரர்கள் பிரதிவாதிகள் நிலம், முனுசாமி நிலம் என்று குறிப்பிட்டுள்ள*

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நிலங்களை விட செங்குத்தாக சுமார் 60 அடி உயரத்தில் உள்ளது. மேற்சொன்ன வாதியின் அனுபவத்தில் உள்ள அரசு புறம்போக்கு நிலத்திலோ அல்லது பட்டா நிலத்திலோ மாட்டு வண்டி பாதையோ, பாதையோ, வழியோ எதுவும் நான் வழக்கு சொத்தை பார்வையிட்டபோது இல்லை. நான் வழக்கு சொத்தை பார்வையிட்டபோது எனது மாதிரி வரைப்படத்தில் வாதி அனுபவத்தில் உள்ள அரசு புறம்போக்கு நிலம் மற்றும் பட்டா நிலம் ஆகியவற்றில் வண்டி வழியோ, பாதையோ, வழியோ எதுவும் இல்லை என்பதுடன் அந்த நிலங்களின் வழியாக எனது மாதிரி வரைப்படத்தில் பிரதிவாதிகள் நிலம் மற்றும் முனுசாமி நிலம் என்று குறிப்பிட்டுள்ள நிலங்களுக்கு வழி பாதை மற்றும் வண்டி வழி ஏற்படுத்தவோ அல்லது போகவோ வாய்ப்பு எதுவும் இல்லை. காரணம் பிரதிவாதிகள் நிலம் மற்றும் முனுசாமி நிலம் ஆகிய இரண்டும் வாதியின் பட்டா நிலம் மற்றும் அவர் அனுபவத்தில் உள்ள மனு அயிட்டம் நெம்பர் 1 புறம்போக்கு நிலம் ஆகியவைகளை விட 60 அடி ஆழம் பள்ளத்திலும், உயரத்திலுமாக உள்ளது. பிரதிவாதிகள் முனிசாமி நிலத்தை ஒட்டியும் அதற்கு மேற்குபுறத்தில் காணாறு செல்கிறது. அதற்கு மேற்கு புறத்தில் மேல்கொல்லபல்லி கிராமம் மற்றும் கிராமசாலை உள்ளது. எனது மாதிரி வரைப்படத்தில் பிரதிவாதிகள் நிலம் மற்றும் முனுசாமி நிலம் என்று குறிப்பிட்டுள்ள நிலங்களுக்கு அந்த மேல்கொல்லபல்லி கிராம சாலை வழியாக தான் செல்ல முடியும்."

On considering the above finding given by the advocate commissioner it is beyond the direction given by this court. While the petitioners claiming cart track in the S.No.33/1A but the advocate commissioner specifically given finding that there is no pathway, cart track in the suit property. It is further submit that he further stated that there is

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no possibility to reach the petitioners property through the respondents suit property and given observation that the petitioners only use the road situated on the western side of the petitioners property beyond the kanar. On considering the unnecessary findings and observations given by the advocate commissioner it will create doubt upon his report and plan.

**6.5.** It is further submit that in the advocate commissioner report he stated that Surveyor measured the property, but there is no single statement regarding the measurement of the schedule mentioned property in the report. While this court specifically directed to measure the petition mentioned property but the advocate commissioner failed to disclose the measurements of the properties in his report. This court further finds that the advocate commissioner himself stated that the surveyor and VAO given sketch for the properties and he annexed the same with the report. But on perusing the report he filed three computerized sketch without attested by the surveyor also. While the advocate commissioner stated that he inspected the property on 19.03.2022 and at that time of inspection the surveyor given the sketch, but on perusing the three computerized sketch those are issued on 18.08.2024 only. Hence this statement regarding the surveyor sketch is not true. The advocate commissioner is tried to mislead this court.

**6.6.** It is further submits that the main objection raised by the respondent is that without asking for set aside the previous commissioner report the petitioners cannot pray for appointment of new advocate commissioner. On considering the objection filed by the petitioners on

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23.10.2024 itself the petitioners prayed to reject the commissioner report. In the present petition also the petitioner pleaded to appoint new advocate commissioner in view of dissatisfaction of the earlier advocate commissioner and also his report. By that prayer the petitioners want to set aside the earlier advocate commissioner report. It is not necessary to specify the word set aside in the prayer column, but the petitioners clearly mentioned the word dissatisfaction which is specified in Order 26 Rule 12(2) of Code of Civil Procedure Code. The relevant portion of sub rule is extracted here below that, “ ***Where the court has reason to be dissatisfied with them, it made direct such further inquiry as it shall think fit***”. On that the petitioners clearly asked for set aside the previous advocate commissioner report and plan in the present petition. Hence the judgment relied by the respondent is not relevant to the facts of the case.

6.7. It is further submitted that on considering the above discussion this court was not satisfied with the advocate commissioner report filed on 12.09.2024. On considering the above circumstances this court relying upon the judgment of The Hon'ble Supreme Court, in its latest decision in ***M.P.Rajya Tilhan Utpadak Shaker Sangh Maryadit, Pachama, District Sehore and Others v. Modi Transport Service, [2022 LiveLaw (SC) 471]*** has held that,

*“the Commissioner's report is only an opinion or noting with the details / statement to the Court the actual state of affairs. Such a report does not automatically form part of the Court's opinion, as the Court has the power to confirm, vary or even set aside the report or in a given case, issue a new Commission.”*

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On considering the above judgment and the above discussion this court thinks the advocate commissioner failed to comply this court direction clearly and given unnecessary finding regarding the cart track which will prejudice to the court decision. And the advocate commissioners observations are biased infavour of the respondent and the advocate commissioner tried to mislead this court by filing downloaded sketch. On that the inspection done by the advocate commissioner on 19.03.2022 and the report filed by the advocate commissioner create doubt on the genuienity of the report. Till yet trial was not commenced. Hence this court thinks it is necessary to set aside the previous advocate commissioner report dated 12.09.2024 filed in IA.03/2019 and here with appointing new advocate commissioner. On that this court inclined to allow this petition.

#### **7. Result:-**

As a result this petition is allowed as follows.

1) On that the previous advocate commissioner report and plan filed by Mr.G.Subramani on 12.09.2024 is set aside and

2) Advocate, Mr.Sri SanthoshKumar, (MS.1184/1992) is appointed as the New commissioner to inspect the petition mentioned property and to note down its physical features and measurement of the petition mentioned property with the help of Inspector of Surveyor with aid of the concerned Village Administrative Officer and directed to file report, plan along with the separate plan of surveyor and directed to take Photographs of the scheduled mentioned property.

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3) The petitioners are directed to pay Rs.2000/- 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 filing the report.

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

5) 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 27<sup>th</sup> day of February 2026.

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**Petitioner side Witnesses and Exhibits :-** Nil

**Respondents side Witnesses :-** Nil

**Respondents side Exhibits :-**

1. Ex.R1                      Petition and affidavit in IA.03/2019

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