

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT**  
**PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,**  
**(J.O.Code - TN02266)**  
**DISTRICT MUNSIF, KATPADI**

Monday, this the 17<sup>th</sup> Day of February – 2025

**I.A.No. 2 of 2024**  
**In**  
**O.S.No. 44 of 2024**  
**(CNR.No.TNVL23-000083-2024)**

M.Chandra Prakash

.....Petitioner/Plaintiff

**-Vs-**

1. The District Collector, Vellore District
2. The Revenue Divisional Officer (RDO), Vellore
3. The Tahsildar, Katpadi
4. The Block Development Officer (BDO), Katpadi
5. The Village Administrative Officer, Magimandalam Village
6. The President, Magimandalam Village
7. The Inspector of Police, Melpadi
8. K.Shanmugam
9. Jothi
- 10.Thamarai Selvam

.....Respondents/Defendants

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. S.Narayanan, the Advocate for Petitioner, and Thiru. K.P.Gnanasekaran, the Advocate for Respondents-8 to 10, and even after granting time,

the Respondents- 1 to 5, 7 have failed to file their Counter and they were called absent and set Ex-parte on 12.12.2024, and after receipt of notice, the 6<sup>th</sup> Respondent was called absent & set Ex-parte on 20.06.2024, and upon perusing the petition, counter and the case records, and having stood for consideration till this date, this Court delivers the following:-

### **ORDER**

This petition has been filed by the Petitioner/Plaintiff under Order 26 Rule 9 and Section 151 of Code of Civil Procedure, seeking for appoint of an Advocate Commissioner to inspect the Suit Schedule mentioned property as per the Revenue Records and other Revenue Documents of Magimandalam Panchayat with the help of competent Surveyor, and to file his report with plan and take photos of encroachment if any in the Suit Schedule mentioned property.

1. **Brief averments of the Affidavit filed by the Petitioner is as follows:-**

The Petitioner is the Plaintiff in the above Suit, and he states that he is residing along with his family members in the Plaint mentioned address for several decades, and himself and his brother were having Ancestral property land adjacent to his house, and the Defendants-8 to 10 are adjacent house inmate of him, and there is 15 feet Common Cement Road has been constructed by Magimandalam Village Panchayat from Periya Bodinatham Village to North Street. He can reach his house only after passing the house

of Defendants-8 to 10 in North Street, and he has only access to his house and land from North Street.

1.1 About one year back, the Defendants-8 to 10 encroached the 15 feet Common Cement Road in front of their house, and constructed Bathroom and Compound Wall around it, and they obstruct and constructed the said Bathroom and Compound Wall in the Common Pathway of North Street, to prevent the ingress and egress of the Petitioner's and his family members to reach his house and land. Due to that, the Petitioner and his family members & relatives, unable to walk to reach the Petitioner's house, and he is unable to take any Tractor or any other Vehicle for Harvesting his land. So, the Petitioner and his relatives are walking in another person land to reach Petitioner's house.

1.2 When the 8<sup>th</sup> Defendant along with Defendants-9 & 10 constructed Bathrooms and Compound Wall in the Month of December-2022. Immediately, the Petitioner questioned the illegal construction and asked, how he and his family members could go to their house. But, the Defendants-8 to 10 did not hear his request and continue their construction, and the Petitioner tried to stop the construction and failed in all attempts. Then, the Petitioner contact the Defendants-5 & 6, and asked to stop the illegal construction of 8<sup>th</sup> Defendant. But, the Defendants-5 & 6 did not stopped the Defendants-8 to 10 illegal Street encroachment construction work.

1.3 Hence, the Petitioner send a Letter dated 09.01.2023 to the Chief Minister Cell, and submitted Letter dated 09.01.2023 to 1<sup>st</sup> Defendant on Monday Petition (People Grievance Day) and also submitted a Letter on same day to 6<sup>th</sup> Defendant to remove the encroachment made by 8<sup>th</sup> Defendant in North Street. On the day itself, the Petitioner had paid sum of Rs.800/- & Rs.800/- before the Assistant Director of Survey and Land Records, Vellore in Two Challans to Survey the Street S.No.941 and S.No.190B in Periya Bodinatham Village.

1.4 Then, the 1<sup>st</sup> Defendant send a Letter dated 18.01.2023 to 3<sup>rd</sup> Defendant to take appropriate action on the said petition (09.01.2023) and send the action details to him and 1<sup>st</sup> Defendant's Office. After that also, there is no appropriate action taken by 3<sup>rd</sup> Defendant as against 8<sup>th</sup> Defendant. The 3<sup>rd</sup> Defendant have not come forward to visit the North Street to remove the illegal encroachment construction.

1.5 Again, the Petitioner submitted a Letter to 1<sup>st</sup> Defendant on 17.04.2023 on Monday Petition (People Grievance Day) in Collector Office to remove the Bathrooms building constructed by 8<sup>th</sup> Defendant in North Street by encroaching the Street. But, there is no appropriate action taken by 1<sup>st</sup> Defendant to remove the Street encroachment. Then, immediately, the Petitioner send a Letters dated 24.01.2023 & 25.09.2023 to 3<sup>rd</sup> Defendant and 2<sup>nd</sup> Defendant to remove the Bathrooms building constructed by 8<sup>th</sup> Defendant in the North Street of Periya Bodinatham Village. But, there is no reply and till now, no steps has been taken to remove the illegal Street encroachment.

1.6 Further, the Petitioner sent a RTI's to Defendants-1 to 4 about their action taken by them for his complaint, but there is no proper reply for the said RTI. Hence, the Petitioner and his family members was tired and sustained huge mental agony, and not able to get ingress and egress to Petitioner's house and land. Since the Defendants-1 to 6 are supporting and not taking any action against 8<sup>th</sup> Defendant for encroaching the North Street of Periya Bodinatham Village as the 8<sup>th</sup> Defendant is Village Dharmakartha and having lot of Political Power. So that, the Defendants-1 to 6 keep silent for all the complaint given by the Petitioner, even though, they know very well that the 8<sup>th</sup> Defendant had encroached the Street and constructed Bathroom.

1.7 The Petitioner and his family members were enjoying the North Street as ingress and egress to his house and land from the Ancestral times. Further, every citizen in India, have right to ingress and egress to their home as Easement Right through the Street laid by the Government. When the same was denied by adjacent house owner and constructed the Bathrooms and Compound Wall by encroaching the Street, it is duty of the Defendants-1 to 6 to find out the encroachment made by the Defendants-8 to 10, and remove the illegal encroachment construction immediately.

1.8 For the past one year, the Petitioner and his family members & relatives, unable to use the North Street as ingress and egress to his house and land, due to illegal constructions of Bathroom and Compound Wall by the Defendants-8 to 10 by encroaching the Street. Hence, the Petitioner issued Lawyer Notice dated 02.01.2024 to

the Defendants-1 to 10. In that, the Petitioner asked the Defendants-1 & 2 to order the Defendants-3 to 6 to inspect the North Street in Periya Bodinatham Village along with him & the 7<sup>th</sup> Defendant, and they could able to found the encroachment and constructed Bathrooms and Compound Wall made by the Defendants-8 to 10 in North Street, and to take action to demolish the same, and give him ingress and egress freely.

1.9 The said Notice was served to the Defendants-1 to 10. After receiving the Notice, the 1<sup>st</sup> Defendant send a Letter ஔ.௮.௩/e-1691496/2023, dated 24.01.2024 to 3<sup>rd</sup> Defendant to take appropriate action on the Legal Notice dated 02.01.2024, and inform him about their decision and the same notice was send to the Petitioner Counsel. After that, the 4<sup>th</sup> Defendant Office Staff came to the North Street and issued Letter to the Defendants-8 to 10 to remove the encroachment made in North Street. Till now, there is no action taken by 3<sup>rd</sup> Defendant to remove the encroachment made by Defendants-8 to 10.

1.10 The Petitioner and his family members are still passing through the cultivating land to reach his house. Then, the Petitioner approached the 3<sup>rd</sup> Defendant and asked about their action to 1<sup>st</sup> Defendant's Letter dated 24.01.2024. But, the 3<sup>rd</sup> Defendant asked the Petitioner to approach before the Court, and then only, they can remove the encroachment made by Defendants-8 to 10. Hence, the Petitioner had no other option except to file the Suit for Mandatory Injunction as against the Defendants-1 to 10 to remove the encroachment made by Defendants-8 to 10, and for Permanent

Injunction, and for costs. In order to prove that the constructed Bathroom and Compound Wall made in the Suit Schedule mentioned property by the Defendants-8 to 10, the Petitioner is filing this petition. Since the Defendants-8 to 10 are influence persons in the locality, and they are trying to get Patta in their name for the Suit property, the inspection of Suit property and report of the Advocate Commissioner is necessary, and then only, this Court can come to conclusion. Hence, the Petitioner has come forward with this petition, and no prejudice will be caused to other side if this petition is allowed, and prayed to allow the petition.

2. **Brief averments of the Counter filed by the 8<sup>th</sup> Respondent is as follows:- (Adopted by the Respondents-9 & 10)**

The Respondents denies all the allegations made in the affidavit. Especially, that the Petitioner and Defendants-8 to 10 are adjacent house inmates and there is 15 feet Common Road laid by Magimandalam Village Panchayat from Periya Bodinatham Village to North Street. The Respondents state that the house of the Defendants-8 to 10 is in the Grama Natham, and the Petitioner has constructed his house in his Agricultural Land, and the alleged 15 feet passage is not a Common passage, and the passage absolutely belongs to the Respondents-8 to 10, and the Petitioner has got access to his land and house through a separate passage.

2.1 As the passage is absolutely belongs to the Respondents-8 to 10, they have put up the Bathroom. The Petitioner has no right in the passage, and he cannot say that

his ingress and egress to his house and land is prevented, and unable to take any Tractor or any other Vehicle. Further, the 8<sup>th</sup> Respondent plastered the Pathway by Cement in the year 2001–2003, and the Bathroom was constructed 30 years before, and he put up his house in 1976, and there is no Common Pathway, and the alleged Passage absolutely belongs to the Respondents-8 to 10.

2.2 The Claim of the Petitioner to use the Pathway for his ingress and egress, and to take his Tractor and Vehicles in untenable, and thus, the Petitioner is not entitled for any Permanent Injunction, and the Suit is not maintainable, and not entitled for any Easementary Right of Way as there is no alleged way to reach his house and land. Further, this Court cannot appoint an Advocate Commissioner to collect or create evidence of a Party to litigation and the right claim by the Petitioner is to be proved only by a Admissible evidence and not by creating through a Advocate Commissioner. The enjoyment of Way by the Petitioner and his family members in the past cannot be assessed or ascertained by a Advocate Commissioner, and prayed to dismiss the petition.

3. Neither the Petitioner nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides has been heard. Records Perused. Upon careful analysis of the records, it is found that this petition has been filed by the Petitioner with a plea for Appointment of an Advocate Commissioner to inspect the Suit Schedule mentioned property as per the Revenue Records and other Revenue Documents of Magimandalam Panchayat with the help of Competent Surveyor, and to file his report with plan, and take photos of encroachment if any, in the Suit Schedule mentioned property.

5.1 The provisions of Order 26 Rule 9 of the CPC are very clear and for the ready reference the same is reproduced below:-

**“9. Commissions to make local investigations.-**

In any Suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profit or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

5.2 It is clear from the above that during pendency of the trial and before the judgment if the Court finds that any issue requires clarification or elucidation, the Court

may suo-motu appoint Commissioner to submit the report for which no application is required. Further, the scope of Order 26 Rule 9 of the CPC is very limited. The Court in any Suit in which a local investigation is required or proper for purpose of elucidating any matter of dispute may appoint a Commissioner. It is true that Order 26 Rule 9 of CPC empowers the Court to appointment Advocate Commissioner to make local investigation as it finds fit and proper based on the facts and circumstances of the case.

6. It is seen from records that the present Petitioner is the Plaintiff in the Suit, and he has filed the above Suit for the relief of declaring his Easementary Right over the Suit Schedule property which earmarked as 'ABCD' and shown in Red Colour in the Rough Sketch annexed to the Plaint as a Public Pathway through which he has got ingress and egress to his house, and for Mandatory Injunction directing the Defendants-8 to 10 to demolish the Superstructure of Bathroom and Compound Wall constructed in the Suit Schedule mentioned property building, in case of failure demolish the Superstructure through process of Court, and also for Permanent Injunction restraining the Defendants-8 to 10, their men, agents, servants, etc., not to reconstruct any building in North Street, Periya Bodinatham Village, Katpadi Taluk, Vellore District after demolish of Suit property building, and for costs.

7. The Respondents herein are the Defendants in the above Suit. In this case, on receipt of Summons, the 3<sup>rd</sup> Defendant had filed Written Statement on 28.08.2024 and the same was adopted by the Defendants-1, 2, 4, 5 & 7, and the 8<sup>th</sup> Defendant had

filed Written Statement on 14.10.2024, and the same was adopted by the 9 & 10-Defendants. Necessary issues were framed on 30.10.2024, and posted for Trial. At this juncture, the Petitioner has filed this present petition to appoint an Advocate Commissioner.

8. In affidavit, the Petitioner/Plaintiff has alleged that he is residing along with his family members in the Plaint mentioned address for several decades, and he is having Ancestral property land adjacent to his house, and the Defendants-8 to 10 are adjacent house inmates to him, and there is 15 feet Common Cement Road has been constructed by Magimandalam Village Panchayat from Periya Bodinatham Village to North Street, and he can reach his house only after passing the house of Defendants-8 to 10 in North Street, and he has only access to his house and land from North Street, and about 1 year back, the Defendants-8 to 10 encroached the 15 feet Common Cement Road in front of their house and illegally constructed Bathroom and Compound Wall around it, and prevented the ingress and egress of the Petitioner and his family members to reach his house & land, and he is unable to walk or take any Tractor or any other Vehicle for harvesting his land, and he is walking in another person land to reach his house.

9. On contra, the Respondents-8 to 10/Defendants have stated that the house of the Defendants-8 to 10 is in the Grama Natham, and the Petitioner has constructed his house in his Agricultural Land, and the alleged 15 feet passage is not a Common and its

belongs to them absolutely, and they have put up the Bathroom, and the Petitioner has no right in the Passage, and he has got access to his land and house through a Separate Passage.

10. From the above averments & the pleading, it is found that the Originally, the Suit itself is filed by the Plaintiff for the relief of Declaration of his Easementary right over the Suit Schedule mentioned property which earmarked as 'ABCD', and shown in Red Colour in the Rough Sketch annexed to the Plaint as a Public Pathway through which he has got ingress and egress to his house, and for Mandatory injunction to demolish the Superstructure of Bathroom and Compound Wall constructed in the Suit Schedule property building, and also for Permanent Injunction restraining the Defendants-8 to 10, not to reconstruct any building in the North Street, after demolition.

11. According to the Plaintiff, the Defendants-8 to 10 encroached 15 feet Common Pathway, and illegally, they constructed Bathroom and Compound Wall in the said Common Pathway of North Street (i.e., the Suit Schedule property). The Plaintiff can reach his house, only after passing the house of Defendants-8 to 10 in North Street, and he has only access to his house and land from North Street. Due to the said illegal constructions of Bathrooms and Compound Wall, he is unable to use the North Street as ingress and egress to reach his house and land, and there is no other or alternative way available to him to reach his house and land, and the Suit Schedule property is the only easement of necessity for him, and the Defendants-8 to 10 had obstruct and constructed

the Bathroom and Compound Wall in the Common Pathway of North Street, he is prevented to use the North Street to reach his house and land. Hence, he filed this Suit for the declaration of his Easementary right over the Suit Schedule property described as 'ABCD', and shown in Red Colour in the Rough Sketch annexed to the Plaint as a Public Pathway through which he has got ingress and egress to his house, and for Mandatory Injunction to remove the Superstructure and also for Permanent Injunction.

12. It is not disputed by the Defendants-8 to 10 either in the Written Statement & in the Counter filed by them in this petition that there was a 15 feet Passage, and they had constructed Bathroom & Compound Wall. But, the Defendants-8 to 10 specifically denied that the alleged 15 feet Passage is not a Common Passage, and its belongs to them absolutely, and the 8<sup>th</sup> Defendant plastered the Pathway by Cement in the year 2001–2003, and the Petitioner has no right in the Passage, and he has got access to his land and house through a Separate Passage.

13. On 30.10.2024, this Court framed issued. Amongst them, the Issue No.1 to 3 are revolves around the Plaintiff's Easement Right in 'ABCD' as Pathway, and the alleged construction of Bathroom and Compound Wall in the Pathway, and to demolish the same. According to the Plaintiff, the Defendants-8 to 10 are adjacent house inmate of him, and they have encroached the 15 feet Common Cement Road in front of their house and constructed Bathrooms and Compound Wall in the Common Pathway of North Street which is described as Suit Schedule property in the above Suit.

14. It is pertinent to mention that in the above Suit, the Plaintiff has sought the relief for declaration of his Easement Right over the Suit Schedule mentioned property & for Mandatory Injunction against the Defendants-8 to 10. Therefore, in order to grant Mandatory Injunction as against the Defendants-8 to 10, it is just and necessary to this Court to find out that is there any encroachment in the Suit Schedule mentioned property which are shown as 'ABCD', and shown in Red Colour in the Rough Sketch annexed to the Plaint as a Public Pathway. Also, to ascertain that is there any other alternative way for the Plaintiff to access his house and land.

15. From the above, it is just and necessary to this Court to elucidate the matter in dispute, and to find out that whether the Suit Schedule mentioned property is available for grant of easementary right, and is there any alleged construction made in the Suit Schedule property or not? In such case, mere oral evidence will not suffice in deciding the issue unless a local investigation is conducted. This Court is of the view that if the local investigation is conducted, it will help the Court to determine the said issues.

16. From the above discussions, this Court is of the view that the best evidence could be obtained only by the Appointment of Advocate Commissioner, and therefore, no pre-judice will be caused to any of the Respondents by Appointing the Advocate Commissioner to inspect the Suit Schedule Suit properties as per the Revenue Records and other Revenue Documents of Magimandalam Panchayat along with the qualified

Surveyor, and to take photographs. In fact, the above Advocate Commissioner's report and plan would enable the Court for the purpose of throwing more enlighten to arrive at a fair decision, and thus, the appointment of an Advocate Commissioner is necessary to elucidate the ground realities. Accordingly, this point is answered.

17. **Result:-**

In fine, in the interest of justice, this petition prayer is allowed. An Advocate **Thiru. P.G.Balaji (Enrollment No.Ms.2036/2000)** is appointed as Advocate Commissioner, and he is directed to inspect the petition Schedule mentioned properties, and to measure the same as per the Revenue Records and other Revenue Documents of Magimandalam Panchayat with the help of Taluk Surveyor, and VAO of concerned Village, and to take photographs if necessary, and prepare rough plan with the report and to file the same before this Court.

The following directions are issued to the Court Commissioner and also the Government Authorities to assist the Court Commissioner to carryout the Warrant.

- (i) The Court Commissioner is directed to inspect the petition Schedule mentioned properties after issuing advance notice to both sides. If any memo of inspection is given by any of parties it should be received by the Court Commissioner and the same may be considered subject to order of this Court.

- (ii) The Tahsildhar of Katpadi Taluk is directed to provide necessary Surveyor to the Court Commissioner on request by the Court Commissioner without any delay to carry out this commission.
- (iii) The Court Commissioner is directed to issue advance request letter to the Tahsildhar, Katpadi Taluk by enclosing a copy of this Order and Warrant which enable them to depute a Suitable Surveyor to carry out the Warrant.
- (iv) The Court Commissioner's initial remuneration is fixed Rs.7,000/- (Rupees Seven Thousand Only) and the same shall be deposited by the Petitioner/Plaintiff within a Week in this Court.
- (v) The Office is directed to prepare Commission Warrant after the deposit is made by the Petitioner, and issue to the Court Commissioner.
- (vi) If any law and order problem may arise, the Court Commissioner may address a Letter to the Jurisdiction Police for want of Police protection and the Police has to extent their support without any deviation to the Court Commissioner.
- (vii) In any event either the Police or the Revenue Department failed to extent their co-operation to the Court Commissioner and on report or memo by the Court Commissioner or Counsel, as the case may be, it will be viewed seriously and they are responsible for further contempt of Court on affidavit received from the Court Commissioner.

(viii) The time to file a Report with Plan is 45 days from the date of receipt of the Warrant by the Court Commissioner.

(ix) After filing of Report and Plan, then only, the Court Commissioner is entitled his remuneration on filing necessary memo from this Court.

(x) The Court Commissioner is directed to file a Report and Plan on 08.04.2025.

-//Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court on this the 17<sup>th</sup> Day of February – 2025.//-

(Sd/-).. K.Venkatesan  
DISTRICT MUNSIF  
KATPADI

**Both side documents and witnesses: Nil**

(Sd/-).. K.Venkatesan  
DISTRICT MUNSIF  
KATPADI