

**IN THE COURT OF THE I ADDITIONAL SUBORDINATE JUDGE,
VILLUPURAM.**

PRESENT : Tmt.M.S.Varalakshmi, B.A., B.L.,

I Additional Subordinate Judge, Villupuram.

Thursday the 13th day of November 2025

IA.No.21/2024

in

O.S.No.289/2024

(CNR.No.TNVP02-001702-2024)

1. Ganesan

2. Arasan

... Petitioners/Plaintiffs

/Vs/

1. Jayaraman

2. Segar

3. Saminathan

...Respondents/Defendants

This petition is filed on 31.01.2023, 08.06.2023 and taken on file on 08.09.2023 as IA.370/2023 in OS.360/2023 and transferred to Sub Court, Tirukoilur as per the orders of Principal District Judge, Villupuram in A.No.593/2017 dated 26.09.2023 and again transferred to this Court as per the Orders of Principal District Judge, Villupuram and new number assigned as IA.21/2024 in OS.289/2024 and came up for final hearing before me on 01.11.2025 in the presence of Mr.D.Arockia Vinoth Prince, Advocate for petitioners/Plaintiffs and after service of notice, the respondents no.2 and 3 called absent and set exparte and steps for respondent no.1 not taken and heard petitioner side and upon perusing this case records and having

stood over for consideration till this day, today this Court delivers the following.....

ORDER

This petition is filed by the petitioners/plaintiffs under Order 26 Rule 9 of CPC praying to appoint an Advocate Commissioner to measure the entire suit properties and note down the physical features of the “C” and “D” Schedule of the suit properties based on records with the help of the Taluk Surveyor and Village Administrative Officer and to find out the encroachments by the 1st and 2nd and 3rd defendants in the “C” and “D” Schedules of the suit properties and to file the report and plan of the advocate commissioner to this Hon’ble Court.

2) Short and Summary of the affidavit and petition is as follows :-

The petitioner is the 2nd plaintiff in the accompanying suit and the 1st plaintiff is his brother and he is filing the proof affidavit on behalf of his brother and he is well acquainted with the facts of the case and the suit properties are situated within the jurisdiction of this Hon'ble Court and his brother is the absolute owner of the 36 cents and he is the absolute owner of the 9 cents and the totalling of 45 cents of the property situated at Mugaiur Panchayat Union, Kongaruyanur Panchayat which is more clearly described in the property schedules of this plaint and they are in the peaceful possession of the suit properties for the past 6 years and his brother had purchased an extend of 45 cents of property from Jayaraman and Sivalingam under a registered sale deed dated 05.11.2015 vide the document No: 2197/2015 and his brother was in the possession and enjoyment of the property until he sold the 9 cents of the property to him and his brother is now in the peaceful possession and enjoyment of the remaining 36 cents and as his brother was in the possession of the entire 45 cents property, his brother had also received the patta in favor of his name bearing the patta No: 375 and he is herewith file the Xerox copy of the sale deed dated 05.11.2015 vide the document No.2197/2015 and the Xerox copy of the patta

No 375 and crave leave the Hon'ble court to treat its contents as part and parcel of this affidavit and his brother had sold 9 cents out of 45 cents property to him under a registered sale deed dated 03.04.2019 vide the document No: 617/2019 and he is in the possession and enjoyment of the 9 cents of the property after purchasing the said property from his brother and for the suit purpose the 36 cents of his brother's property is named as – "A" schedule of the property and the 9 cents of his property is named as "B" schedule of the property and the encroachment area in "A" schedule property by the 1st and 2nd defendant is named as "C" schedule of the suit property and encroachment area by the 3rd defendant is named as "D" schedule of the suit property and he is herewith file the photo copies of the sale deed dated 03.04.2019 and the encumbrance certificate and photo copy of house Tax for the year 2020-2021 of Ganesan and with crave leave of this Hon'ble court to treat its contents as part and parcel of this affidavit and as the 1st and the 2nd defendants are the father and the son and as 1st defendant had sold the entire 45 cents of property to his brother and now through the 2nd defendant, the 1st defendant is claiming the right over property unlawfully and even the 1st and the 2nd defendant joint together and encroached 17 sq. fts X 10 Sq.fts = 170 sq.fts of "C" schedule of the suit property in the "A" schedule of the property and constructed cement hut in the "C" Schedule of the suit property on 30.08.2020 and he is herewith file encroached "C" schedule property building with CD and crave leave of this Hon'ble court to treat its contents as part and parcel of this affidavit and the 3rd defendant is claiming the right over the "B" schedule of the suit property unlawfully and even 3rd defendant had encroached 17 sq.fts X 10sq fts=170 sq.fts of "D" schedule of the suit property in the "B" schedule of the suit property and constructed cement hut in the "D" Schedule of the suit property on 29.09.2020 and he is herewith file encroached "D" schedule property building with CD and crave leave of this Hon'ble court to treat its contents as part and parcel of this affidavit and complaint had been launched by him about the encroachment of the "C" Schedule and the "D" schedule of the suit properties by these defendants to the superintendent of

Police, Villupuram on 30.09.2020 and the defendants are not ready to the evict the encroached area of the suit property and they had not received justice and they are directed to file the suit to recover the suit property and for the suit purpose sketch is drawn to indicate the "A", "B" "C" & "D" of suit schedule properties and in the Sketch "ABCH"+ "DEFG" are defined as "A" Schedule of the Suit property and "CDGH" is defined as "B" Schedule of the suit property and "IJKL" is defined as "C" Schedule of the suit property and "MNOP" is defined as "D" schedule of the suit property and the sketch is attached herewith this affidavit and he is herewith file photo copy of the complaint copy given to SP, Villupuram on 30.09.2020 and this Hon'ble court to treat its contents as part and parcel of this affidavit and they have sent the legal notice to the defendants on 06.01.2022 and the same was received by the 2nd defendant on 13.01.2022 and 1st defendant's legal notice was returned as refused to receive and 3rd defendant notice was returned as no such person but Saminathan S/O Maari was in the village and after verifying records, the rejoinder notice was sent to the defendants on 02.07.2022 with the correct name of the 3rd defendant and correction in the 4th Para of the notice and correction in the 5th Para and the legal notice was received by the 1st and the 2nd defendants on 05.07.2022 and the 3rd defendant's notice was returned on 12.07.2022 as the addressee went to Bangalore for the job purpose" and he is herewith file the office copy of the legal notice dated 06.01.2022, the refused to receive notice copy by the 1st defendant dated 13.01.2022, returned notice of the defendant dated 10.01.2022, the 2nd defendant's acknowledgement card dated 13.01.2022, rejoinder notice dated 02.07.2022, the 1st & the 2nd defendants acknowledgment cards and the 3rd defendant's returned legal notice cover and crave leave of this Hon'ble court to treat its contents as part and parcel of this affidavit and the defendants being the powerful persons in the society and illegally can dispossess them by force at any time by creating some false documents and therefore they are approaching this Hon'ble Court to seek a declaration that his brother is the absolute owner of the "A" Schedule and the "C"

schedule of the suit property and to recover the "C" schedule property from the 1st & the 2nd defendants as vacant site and hand over to his brother and to declare he is the absolute owner of the "B" & "D" Schedules of the suit property and to recover the "D" schedule of the suit property from the 3rd defendant as the vacant site and hand over to him and for the permanent injunction restraining the dependents, their men agents and any person claiming through the defendants from interfering with their peaceful possession and enjoyment of the entire suit properties and therefore in the circumstances it is just necessary that this Hon'ble Court may please to appoint the advocate commissioner to measure the entire suit properties and note down the physical features of the "C" & "D" Schedule of the suit properties based on records with the help of the Taluk Surveyor and Village Administrative Officer and to find out the encroachments by the 1st, 2nd & the 3rd defendants in the "C" & "D" Schedules of the suit properties and to file the report and plan of the advocate commissioner so this Hon'ble Court and thus render justice.

3. After service of notice, the respondent no.3 called absent and set exparte on 24.09.2025. After service of notice, the respondent no.2 appeared through Advocate and then he called absent and set exparte on 01.11.2025 and steps for R1 not taken.

4. In this petition, there is no oral and documentary evidence let in by petitioner side. Petitioner side argument heard. Available case records are perused.

5) Point for determination :-

Whether this petition for Commission is liable to be allowed or not? is the point for determination of this petition.

6) On the Point :-

The learned counsel for the petitioners/plaintiffs would submit that the 1st and 2nd respondents encroached the suit “A” Schedule properties which is the portion of suit “A” Schedule properties is names as “C” Schedule of property and encroachment area by the 3rd defendant is named as “D” schedule property and the respondents are raising the dispute with regard to the measurement and identity of the suit properties and so, to note down its physical feature in and around and for the adjudication of the matter in dispute and to avoid the multiplicity of proceedings, this Commission petition ought to be allowed in the interest of justice.

7. This court is carefully considered the submission of petitioner side and perused the case records. The main suit for declaration of title and Permanent injunction is now pending for Written statement. This commission petition is filed on the ground that the respondents encroached the suit “C” and “D” Schedule property which is the portion of suit “A” Schedule property and the respondents are claiming the said encroached portion as belonged to them and they are raising the dispute with regard to the measurement and identity of the said properties.

8. To decide the main suit issue effectively and for proper adjudication of the matter in dispute and to avoid the multiplicity of proceedings, it is just and necessary that the commissioner ought to be appointed for measure the suit properties and note down its physical features along with its surrounding property.

9. If this petition is allowed, no great prejudice and irreparable loss will be caused to the respondents. But if this petition is dismissed, the petitioner will be put into great hardship and irreparable loss and so, the reason of present petition is satisfactory and acceptable in nature.

10. For the foregoing reasons, the argument of the petitioner side is accepted and so, this court is find that this petition is liable to be allowed with cost.

In the result, Advocate **Mrs.S.Mageswari (M.S.770/2019)** is Appointed as Advocate Commissioner to measure the entire suit schedule properties and note down the physical features of the 'C' and 'D' Schedule properties and to find out the encroachments by the defendants no.1 to 3 in the 'C' and 'D' schedule of suit properties with the assistance of VAO and Taluk Surveyor and file the report along with surveyor report. Her remuneration is fixed as **Rs.15,000/-**. The same shall be payable by the Petitioner directly to the Advocate Commissioner within a month. After receipt of the same, the Advocate Commissioner shall visit the property along with surveyor and VAO and inspect, measure and record the petition mentioned schedule of property. **Advocate Commissioner report by 10.12.2025.**

Dictated to the Steno-Typist directly, typed in computer by her, corrected and pronounced by me in Open Court, this the 13th day of November 2025.

I Additional Subordinate Judge,
Villupuram.

Enclosure:

List of Petitioner side Witness and Exhibit :-
(Nil)

List of Respondents side Witness and Exhibit :-
(Nil)

I Additional Subordinate Judge,
Villupuram.