

IN THE COURT OF THE MUNSIFF OF ALATHUR

Present:- Sri.K.Sidhik, Munsiff

Thursday, 24th day of September, 2020
(2nd day of Aswina, 1942 S.E)

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INTERLOCUTORY APPLICATION No.01/2020(453/2020)

IN

ORIGINAL SUIT No.145/2012

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| 1. Devaki, Aged 70 years, W/o Krishnan,
Residing at Odukur Kalathil, Vandazhi
Amsom Desom, Alathur Taluk. | } | Plaintiff/
Petitioner |
| 2. Sumangali, Aged 45 years, D/o Krishnan,
Residing at Odukur Kalathil, Vandazhi
Amsom Desom, Alathur Taluk. | | |

Vs.

- | | | |
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| 1. Vasu, Aged 63 years, S/o Mayan,
Residing at Chelode House, Chittadi,
Vandazhi Amsom Desom, Alathur Taluk. | } | Defendants/
Respondents |
| 2. Chandrika, Aged 54 years, W/o Vasu,
Residing at Chelode House, Chittadi,
Vandazhi Amsom Desom, Alathur Taluk. | | |

This petition is coming on 25th day of August, 2020 for final hearing before me in the presence of Sri.V.Mani, Advocate for petitioner and of Sri.V.B.Vikas, Advocate for respondent, and having stood over to this day for consideration and this court passed the following.

ORDER

Petitioners/plaintiffs filed the petition for remittance of the Commission Report and plan under Order XXVI Rule 10(3) and Section 151 of the Code of Civil Procedure.

2. Case of the petitioners in brief is as follows :-

Suit is one for fixation of boundaries. Plaint schedule properties belongs to the petitioners. The Advocate Commissioner has filed report on 10.01.2020 after measuring the properties. The report submitted by the Advocate Commissioner will not be helpful for the effective and just disposal of the suit. Commissioner has filed the report without measuring the plaint schedule properties properly. Even though a sale deed bearing No.2687/1979 was handed over to the Advocate Commissioner, the Advocate Commissioner not measured item No.2 of the plaint schedule properties by virtue of the said sale deed. On that reason Advocate Commissioner has found only a less extent of what originally held by the petitioners by virtue of their relevant title deeds. The petitioners had given some extents of property to the respondents out of 6.5 Acres of land by virtue of exchange deed bearing No.4675/1985. Advocate Commissioner has not

taken any pain to measure the remaining properties of the petitioners after the sale of 5.05 Acres of property to the respondents by virtue of the aforesaid exchange deed. For the said reasons the commission report and plan submitted by the Advocate Commissioner has to be remitted back.

3. Respondents/defendants filed counter contenting as follows :-

The Commissioner has properly inspected and measured the properties. The Commissioner has filed the report after measuring the properties by virtue of relevant title deeds. Since the Commissioner has measured the property properly and reported the true facts before the court, the report and plan should not be remitted back for a fresh report and plan. For the said reasons IA is liable to be dismissed.

4. The following points arise for consideration :

1. Whether the petitioners are entitled to get an order remitting back report and plan filed by the Advocate Commissioner ?

2. Reliefs and order ?

5. Heard.

6. Point No.1 :- Suit is one for fixation of boundary. Altogether there are three items of plaint schedule properties. According to the petitioners, plaint schedule properties belongs to them by virtue of sale deed bearing No.2687/1979, exchange deed

bearing No.4675/1985, sale deed bearing No.425/1989 and sale deed bearing No.4681/1985. Admittedly, first defendant is having his property on the eastern and southern side of item No.1, northern and western side of item No.2 and western side of item No.3 of the plaint schedule properties. Admittedly, second defendant is having property on the northern side of item No.3 of the plaint schedule property. According to the petitioners (plaintiffs), plaint schedule properties and defendants' properties are lying without any boundaries to separate those properties. Subsequently, Advocate Commissioner was appointed by the court. Advocate Commissioner measured the properties with the help of private surveyor and filed report before the court on 13.01.2020.

7. According to the petitioners, Advocate Commissioner has not measured the properties properly by considering all relevant title deeds of the petitioners. According to the petitioners, Advocate Commissioner has found only a less extents of what is actually held by the petitioners by virtue of their relevant title deeds. But respondents contended that the Commissioner has measured the properties and reported the true facts before the court.

8. On going through the title deeds produced from the side of petitioners it would reveal that petitioners had got 6.53 Acres of property as per sale deed bearing No.2687/1979 and out

of which 5.51 Acres of land was sold to first defendant (first respondent) as per an exchange deed bearing No.4675/1985. The remaining property as per aforementioned sale deed bearing No.2687/1979 is 1.38 Acres. Out of the said 1.38 Acres of land 9.3 cents of land was mentioned as item No.1 and the remaining 1.28 Acres of land was mentioned as No.1 property in item No.2 of plaint schedule properties. By virtue of exchange deed 4675/1985 petitioners had got 6 Acres of land from the respondents. The said 6 Acres of land has been mentioned as second item property in item No.2 of plaint schedule properties. By virtue of a sale deed bearing No.4681/1985 husband of the first petitioner had got 2.22 Acres of land and on the death of person Krishnan (husband of first petitioner) both petitioners got said 2.22 Acres of land. The said property has been mentioned as item No.3 of the plaint schedule properties. By virtue of sale deed bearing No.425/1989 petitioners had purchased 4.69 Acres of land. The said property has been mentioned as third item in item No.2 of the plaint schedule properties. Thus petitioners altogether held 14.28 Acres of land by virtue of aforementioned title deeds.

9. On perusal of the commission report it would reveal that Advocate Commissioner has measured item No.2 of the plaint schedule properties with the help of exchange deed 4675/1985 and sale deed bearing No.425/1989. According to the

Advocate Commissioner, though total extents of item No.2 of the plaint schedule properties has been mentioned in the plaint as 11.97 Acres of land, such extents of land was not found in the field after measurement. On going through the plaint averments and title deeds produced from the side of petitioners it would reveal that item No.2 of plaint schedule properties includes properties covered by sale deed No.2687/1979, exchange deed bearing No.4675/1985 and sale deed bearing No.425/1989. But on perusal of commission report it would show that Advocate Commissioner was on an impression that item No.2 of plaint schedule properties are covered only by exchange deed bearing No.4675/1985 and sale deed bearing No.425/1989. Advocate Commissioner has failed to note the fact that item No.2 of plaint schedule properties includes 1.28 Acres of land covered by sale deed bearing No.2687/1979 also. Commission report would not reveal that the Advocate Commissioner has measured the property as per sale deed No.2687/1979. Advocate Commissioner has never made an attempt either to identify total extents of property covered by sale deed bearing No.2687/1979 or to identify the remaining property therein after marking 5.15 Acres of land sold by petitioners to the first respondent. For the said reasons the commission report cannot be accepted for the jest disposal of the case. Accordingly, this point is answered in favour of the petitioners.

10. Point No.2 :- In the light of the findings under point No.1, the petition is allowed.

Counsel for both side submitted that the commission report should not be remitted back to the same Advocate Commissioner as she is not available. According to both side, the earlier Advocate Commissioner is now not practicing here. Considering that submission Advocate Babu Sivadas is appointed as the fresh Advocate Commissioner. Issue warrant to the fresh Advocate Commissioner for execution of work.

In the result, the IA is allowed and commission report is remitted back with the following directions :

1. Advocate Commissioner shall measure the properties with the help of all relevant title deeds of both parties.

2. Advocate Commissioner shall identify total extents of properties covered by sale deed bearing No.2687/1979 and thereafter he shall identify 5.15 Acres of land sold by the plaintiffs to the first defendant and shall also identify the remaining property covered by the said sale deed.

3. Advocate Commissioner shall mention the corresponding re-survey numbers and sub division numbers of the old survey numbers mentioned in all title deeds with the help of co-relation register.

4. Advocate Commissioner shall consider the work memos filed by both sides.

5. Advocate Commissioner shall fix and specifically mark the boundaries of items No.1 to 3 of plaint schedule properties.

Dictated to Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in open court on this the 24th day of September, 2020.

Munsiff

APPENDIX : Nil

Munsiff

Typed by :- Sudha.M.V.

Compared by :-Prakash.M

Fair/Copy of Order
in IA.01/2020 (IA.453/20)
in O.S.145/2020
Dated: 24.09.2020