IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

Present : **Tmt.N.Renuga,** B.A., B.L.,

District Munsif, Sulur

Wednesday, the 13th day of November 2024

I.A.No.19/2024

in

IA.No.3/2021

in

OS.No.14/2021

Maheshwari ...Petitioner/ Plaintiff

/ Vs /

1. P.Thangaraj
2. P.Mandharachalam
3. M.Eswaran
4. P.Kangaraj
5. R.Thangavel (died)
6. Indrani
7. T.Dhanapal ...Respondents / Defendants

This petition coming on 08.11.2024 for final hearing before me in the presence of Mr.K.Sethuram, Advocate for the Petitioner and of Mr.P.K.Praburam, Advocate for the 1st Respondent and Mr.N.Ranganathan, Advocate for the 6th and 7th respondent and Mr.S.Viswanathan, Advocate for the 3rd and 4th Respondents and the 2nd Respondent being called absent set exparte in main suit and upon hearing of both parties and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

ORDER

Petition filed by the petitioner under section 151 of CPC to restore the IA.No.3/2021 in O.S.No.14/2021.

1. The brief averments of the affidavit filed by the Petitioner as follows:-

1.1. The petitioner/plaintiff have filed a petition for under order 26 rule 9 of CPC in IA.No.3/2024 in OS.No.14/2021 before this court and this court ordered appointed K.R.Punithavathi as Advocate Commissioner to inspect the suit property after giving notice to both parties and directed to note down the physical features of the suit property. The counsel for plaintiff had handover the bundle to the parties and hence, he filed a memo and the petition was dismissed and the petitioner was called absent.

1.2. This court vacate the order of injunction and the advocate for the petitioner had applied for fair and final order of the order vacating the injunction granted the copy application was filed with a delay 68 days and the advocate for petitioner has failed to have taken the order of the court with a delay of 68 days and the copy of the CMA and the affidavit file of support are produced along with this application.

1.3. The CMA has been number as CMA.CFR.No.3965/2024 on the file of the Hon'ble Principal Subordinate Judge at Coimbatore. The petitioner counsel intended to withdraw from the case, the counsel should have not informed the petitioner and the counsel had filed a memo without the petitioner knowledge.

1.4. The entire incident took place without any regards for law and the petitioner had to rely upon his advocate who had filed a memo and had the application dismissed. The petitioner not well versed with the legal matters. The petitioner/plaintiff has a good case hence, the petitioner / plaintiff filed this petition to restore the IA.No.3/2021. Hence, the petition.

2. The brief averments of counter statement filed by the 7th Respondent and adopted by 6th Respondent as follows :

2.1. The petition is false, frivolous and unsustainable in law and on facts of the case. A copy of the affidavit filed by the petitioner in CMA CFR is annexex as a

document here. In that affidavit she has not mentioned about the charges made out in this affidavit and this charges against the previous counsel are just an afterthought. The petitioner has attempting to mislead this court and more than 3 months she has not taken any steps either to fulfill the order of the court in IA.No.3/2021 or not even came forward to commence the trial. No such incidents as alleged in affidavit has taken place and all the allegations are false.

2.2. Unless if a surveyor is also appointed and directed to survey and demarcate the boundaries of S.F.No.232/2B and other S.F.No's relied by the petitioner the clear picture of the boundary of S.F.No.232/2B will be kept in dark and this pending suit will be taken advantage by the petitioner and her family for using this respondents private land S.F.No.232/2B. Hence, any order passed by noting down the commissioner report alone will only multiple the litigations without putting an end to this frivolous claim. Hence, the petition is to be dismissed.

3. Points for Consideration :-

Whether the petition under section 151 of CPC to restore the IA.No.3/2021 is to be allowed?

4. Points:-

4.1. Heard both side. Perused records. The petitioner/plaintiff filed IA.No.3/2021 under order 26 rule 9 of CPC to appoint an advocate commissioner to note down the physical features of the property in schedule B. This court appointed Mrs.K.R.Punithavathi as Advocate Commissioner to note down the physical features of the suit property and to file her report and plan.

4.2. On 27.09.2024 the Advocate Commissioner filed memo stated that, "the plaintiff's counsel said that he handed over bundle to the parties". The petitioner/ plaintiff also called absent. On the same day this court ordered petition in IA.No.3/2021 is dismissed for default.

4.3. Now the petitioner/plaintiff come forwarded with this petition to restore the IA.No.3/2021. The respondents also objected in their counter. The main suit is filed for permanent injunction to restraining the defendants from enjoying the 'B'

Schedule cart track to reach the lands in 'A' Schedule property. The title of 'B' schedule property is under dispute hence, it must only in order to find the physical features. Hence, in the interest of justice this petition will be allowed.

In the result, this petition is allowed. No cost.

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 13th day of November 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on petitioner side:

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.19/2024 in
I.A.No.3/2021 in
O.S.No.14/2021
Dated : 13.11.2024
DMC, Sulur.