

**IN THE COURT OF THE DISTRICT MUNSIF, SULUR**

Present : **Tmt.N.Renuga., B.A., B.L.,**  
District Munsif, Sulur  
Tuesday the 8<sup>th</sup> day of August 2023  
**IA.1/2021**  
**in**  
**O.S.No.30/2021**

Kalimuthu

... Petitioner/Plaintiff

/ Vs /

1. Mallika  
2. The Revenud Divisional Officer,  
Coimbatore – South,  
Coimbatore  
3. The Tahsildar,  
Sulur, Coimbatore.

... Respondent/Defendants

This petition is coming on 07.03.2023 for final hearing before me in the presence of Thiru.N.Dhanaraj, Advocate for the Petitioner and Thiru.O.K.Thiruvengadam, Advocate for the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are called absent set exparte and upon perusing the records, and this court made the following:

**ORDER**

Petition filed by the petitioner under Order 26 Rule 9 Read with section of CPC to appoint an Advocate Commissioner to note down the physical features and survey the petition schedule mentioned property, with the help of surveyor and file a detailed report with plan by demarking the schedule properties, pending disposal of this suit.

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

1.1. The petitioner father Maruthachala gounder, had purchased the property in S.F.No.436 measuring about 9.65 acres from LKG Naidu @ LK Govindarajalu Naidu vide a deed of sale dated 18.03.1971 registered as doc.No.327/1971 on the file of the Sub – Registrar, Sulur and the same was sold along with the schedule B 'Cart Track'.

Ever since then the petitioner in peaceful use of the above schedule – B 'Cart track' for free ingress and egress to petition property. Thereafter the petitioner's father had sold about 60 cents from the above property to one Rangasamy @ Raju Naidu, vide a sale deed dated 13.03.1974 registered as Doc.No.350/1974, on the file of the Sub – Registrar, Sular and after his demisal the legal heirs of the above Rangasamy @ Raju Naidu had sold the same to the respondent vide a sale deed dated 30.01.2014 registered as doc.No.733/2014 on the file of the Sub-Registrar, Sular.

1.2. The petitioner father had sold another 94 cents to Maruthappa Konar, vide a sale deed dated 21.03.1974 registered doc.No.352/1974, on the file of the Sub-Registrar, Sular. Then the petitioner father had executed a WILL dated 15.03.1996 by bequeathing the remaining 7 acres 50 cents by holding 50 cents for common use and an additional 15 cents which is an 1/2 share over 30 cents of common land in S.F.No.436, in favour of all his sons, i.e., the petitioner and his brothers namely Balasubramaniam, Perumalsamy and Krishnasamy wherein the properties were sub divisioned as S.F.Nos.436/2B2 measuring about 31 ares, 436/2B6 measuring about 27.50 ares and 436/2B9 measuring about 13 ares were allotted to petitioner share and other brothers had separate properties to their respective shares. After the demisal of petitioner's father the properties were divided as per WILL and the properties were sub divisioned as above and a sub divisioned patta for the above properties were granted in petitioner favour in patta No.818.

1.3. The said Rangasamy @ Raju Naidu had also purchased some other properties from LKG Naidu @ LK Govindarajalu Naidu vide a sale deed dated 13.03.1974 registered as doc.No.350/1974 on the file of the Sub Registrar, Sular, wherein right to use the schedule – B 'Cart Track' was also given.

1.4. The patta was granted to petitioner as per his entitlment to the schedule A property, the 1<sup>st</sup> respondent behind petitioner back, by projecting that the LKG Naidu @ LK.Govindarajalu Naidu, had sold the entire schedule B 'Cart Track' to her vendor and her vendor had in turn sold the same to her and by painting a false picture that the schedule – B 'Cart Track' is available within Schedule – A property which is

petitioner patta land and had managed to get patta for 1.50 ares from petitioner patta land and whereby the patta granted in patta No.818 pertaining to the S.F.No.436/2B9 measuring about 13 ares was cancelled and a new sub division patta granted in patta No.1122 by deducting 1.50 ares by making new sub division in S.F.No.436/2B9A measuring about 11.50 ares and a patta in favour of the 1<sup>st</sup> respondent in patta No.1121 for S.F.Nos.436/2B7B measuring about 2 ares, 436/2B9B measuring about 1.50 ares and 436/2C2 measuring about 1 ares.

1.5. The petitioner father, thereafter petitioner and his brothers, 1<sup>st</sup> respondent were all granted right to use the schedule -B 'Cart Track' and the same was not sold to anyone and the petitioner and his brothers have exclusive right to use the same for ingress and egress to the schedule A property and for the same patta cannot be given to one particular party, as the same was not sold to anyone. Since, from the date of purchase the petitioner father i.e., from 18.03.1971 the petitioner in peaceful use and enjoyment of the schedule – B property and had perfected his right of easement by prescription over the same and the same cannot be disturbed by anyone, much less by the 1<sup>st</sup> respondent.

1.6. The schedule B 'Cart Track' is available within the schedule A property, the respondent had somehow managed to get a sub division patta in her favour in patta No.1121 and the same is not valid. The 2<sup>nd</sup> respondent had mechanically passed an order in Mu.Mu.1787/2020/AA2 dated 12.11.2020, by confirming the order of the 3<sup>rd</sup> respondent by granting patta in patta No.1121 in favour of the 1<sup>st</sup> respondent.

1.7. The 1<sup>st</sup> respondent now trying to alter and destroy the schedule – B property and the same was permitted to continue, it will affect petitioner's rights over the schedule – B property. Hence, the petitioner filed this petition.

**2. The brief averments of (Written statement treat as counter statement filed by the 1<sup>st</sup> Respondent as follows:-**

2.1. The petition is false, frivolous, vexatious and unsustainable both in law and on facts. The 1<sup>st</sup> defendant is the absolute owner of the agricultural land measuring 8.66 acres comprising in survey No.429/2B, 436/1 and 435/2 situated at

Chelakarichal village. She purchased the said property as per sale deeds dated 30.01.2014 and 03.02.2014. By virtue of the two sale deed this 1<sup>st</sup> defendant alone is the owner of the pathway. The plaining has no right over the said pathway.

2.2. Originally the above said land and pathway belonged to one LKG Naidu. From him one Rangasamy purchased the said land along with the pathway for valuable consideration. During his life time enjoyed the said pathway without any hindrance from any one. After the purchase of the land she is in possession and enjoyment of the said land without any interruption from 3<sup>rd</sup> parties. Revenue records were mutated in her name. Thus the petitioner having valid title and possession of the above said land and pathway. She is absolute owner of the property.

2.3. With regard to pathway sub division proceedings were conducted by the competent officials after following due process of law. Subsequently the survey number of pathway was sub divided into 436/2B7B, 436/2B9B and 436/2C2 and accordingly, patta was also issued in the name of this 1<sup>st</sup> defendant. The petitioner/plaintiff is the adjacent owner of the land without having any semblance of right over the pathway. The petitioner/plaintiff has access for ingress and egress to the main road. Only to grab the pathway and without any challenging order of the Revenue division orders under Tamilnadu Patta Pass Book Act, the petitioner/plaintiff has filed the main suit. Neither this 1<sup>st</sup> defendant nor any of her relatives did any illegal act. She is in peaceful possession and enjoyment of the property.

### **3. Points for Consideration:-**

Whether the petition filed by the petitioner under Order 26 Rule 9 read with section 151 of CPC is to be allowed?

### **4. Points:-**

4.1. Heard both sides. Perused the records. The main suit is filed by the petitioner that there is 'B' schedule cart track and to declare the same that the plaintiff also having right over the cart track. On perusal of the written statement filed by the 1<sup>st</sup> defendant it is admitted there is pathway which is absolutely belongs to the defendant. By admitting the same, now the burden is on the plaintiff to prove his

right over the suit 'B' schedule pathway.

4.2. On perusal of prayer of the petition, the plaintiff asked the appointment of Advocate Commissioner to note down the physical features and survey the petition schedule mentioned properties with the help of surveyor and to file a detailed report with plan by demarking the schedule properties. While the main prayer is for declaration of the plaintiff's right over the suit pathway, the defendants has not denied the existence measurements of the pathway as described by the plaintiff. Hence it is burden on the plaintiff to prove his right over the B schedule cart track by supporting of oral and documentary evidences. There is no identification dispute for the plaint B schedule cart track. Further the plaintiff challenged the Revenue division officers proceedings in the main 3<sup>rd</sup> prayer and under section 14 of Patta Passbook Act the said prayer is not maintainable before this court.

4.3. If the plaintiff felt that the suit property wrongly sub divided and wrong patta issued in respect suit B schedule pathway. He has to challenge the said order before District Revenue Officer or he has to file suit for demarcation of boundary by paying correct court fee under section 45 of Tamilnadu Court Fees and Suit Valuation Act.

4.4. Hence, the prayer asked in this interim application to demark the B schedule properties by way of appointing the Advocate Commissioner and along with Surveyor is beyond the scope of main relief in the suit. Hence, the petition is unnecessary one.

***In the result, this petition is dismissed. No cost.***

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 8<sup>th</sup> day of August 2023.

District Munsif,  
Sulur.

**List of witnesses and documents on petitioner side:**

Nil

**List of witnesses and documents on Respondents side:-**

Nil

District Munsif,  
Sulur.

Draft/ Fair Order  
I.A.No.1/2021 in  
O.S.No.30/2021  
Dated: 08.08.2023  
DMC, Sulur