

IN THE COURT OF THE DISTRICT MUNSIF, SULUR.

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

District Munsif, Sulur

Tuesday the 21st day of November 2023

I.A.No.2/2022

in

O.S.No.4/2018

1. R.Govindaraj
2. A.Shanmugham
3. S.Rasammal (Died)
4. P.S.Natarajan
5. P.S.Palanisamy
6. P.S.Ramasamy

...Petitioners/ Plaintiffs

/ Vs /

1. S.Senniappan
2. Sakthivel
3. Kalamani
4. Ramathal (died)
5. Pappathy

...Respondents/ Plaintiffs

This petition is coming on 21.09.2023 for final hearing before me in the presence of Tmt.D.Chitra, Advocate for the Petitioners and Thiru.K.Rangasamy, Advocate for the Respondents 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 Order 26 rule 9 of CPC to appoint an Commissioner to measure the schedule mentioned property with the assistance of Taluk Surveyor.

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

1.1. The petitioners/plaintiffs riled the main suit against the respondents/defendants for Mandatory injunction. It is very necessary to measure the suit properties and note to note down the physical features by an Advocate/Commissioner with the assistance of Taluk Surveyor for proving put up a hut in the suit property. Without measuring the suit properties, the

petitioners/plaintiffs are not able to prove their case, as stated in the plaint. The Commissioner's report and plan will reduce much oral and documentary evidence in the suit. Hence, this petition.

2. The brief averments of Counter statement filed by the respondents as follows:

2.1. The application is false, frivolous, vexatious and unsustainable, both in law and on facts of the case. The suit property originally belongs to one Nanjappan by way of inheriting the property from his father Rangey gounder. The said Nanjappan had two wives ie., Ramathal first wife and Pappathi 2nd wife. The first wife Ramathal had only one son namely Ramasamy. The said Ramasamy was unmarried and died in a motor vehicle accident. The 2nd wife Pappathy has three children as the 1st to 3rd respondents/defendants.

2.2. The father of 1st to 3rd respondents and husband of 4th and 5th respondents namely Nanjappan derived an extent of agricultural land of 2.60 acres from his father Rangey gounder by way of ancestral properties out of said 2.60 acres, Rangey gounder parted 1.00 acre of land in favour of Ramasamy who is no more. The deceased Ramasamy received the property of 1.00 acre by way of settlement deed from his father Nanjappan. The remaining extent of 1.50 acres had been disposed of by Nanjappan during his life time.

2.3. In view of the foregoing the suit property of 1.00 acre that came to the right of Ramasamy had been sold to the petitioners/plaintiffs by way of a sale deed by Mrs.Ramathal. The sale is not valid since the property belongs to unmarried person and his parents and brother/sisters have got equal right in the property. Hence, the petition ought to be dismissed.

3. Point for Consideration:-

Whether the petition under Order 26 rule 9 of CPC is to be allowed?

4. Points:-

4.1. Heard both side, records perused. The main suit is filed for Mandatory injunction and permanent injunction stating that the suit property is absolute

property of one Subbanna gounder and the 1st and 2nd petitioners/plaintiffs through a sale deed dated 29.05.1993. The respondents interfere into the peaceful possession and enjoyment of the suit property by the petitioners/plaintiffs. The 1st to 3rd and 5th respondents put thatched hut measured about 150 sq.feet on the Western row on the Western side, at the South West corner of the suit property by taking advantage that the petitioners/plaintiffs are living far away from the suit property while came to know about the encroachment, and filed this petition. The respondents stated that The sale is not valid since the property belongs to unmarried person and his parents and brother/sisters have got equal right in the property.

4.2. On perusal of records the original suit is filed for the relief of Mandatory injunction and permanent injunction by stating that the suit property has been encroached by the defendants and they put hut on the Western side of the suit property at South West corner. Hence, appointment of Advocate Commissioner to inspect the suit property and measure out the same with help of qualified surveyor will help court to arrive just decision of the dispute between the parties in this suit.

In the result, this petition is allowed this court appoints S.Sureshkumar, (MS.No.171/2016) as Advocate Commissioner, directed to give notice to both parties, to inspect the suit property along with Assistance of qualified Taluk Surveyor to measure the schedule mentioned property and filed his plan and report along with the Surveyor report. His remuneration is fixed as Rs.8000/- to be directly paid to the Advocate Commissioner by the petitioners/plaintiffs Commissioner Report and plan call on 20.12.2023.

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 21st day of November 2023.

District Munsif,
Sulur.

List of witnesses and documents on petitioners side:-

Nil

List of witnesses and documents on Respondents side:

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.2/2022 in
O.S.No.4/2018
Dated :21.11.2023
DMC, Sulur.