

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

Present : **Tmt.N.Renuga., B.A., B.L.,**  
 District Munsif, Sulur  
 Wednesday the 22<sup>nd</sup> day of November 2023  
**IA.3/2021**  
**in**  
**O.S.No.218/2021**

1. M.Chinnasamy
2. Vasanthamani
3. Menaha
4. Geethamani
5. Ayyamani

... Petitioners / Plaintiffs

/ Vs /

1. V.A.Sathasivam
2. M.Kavitha
3. K.Muthusamy
4. Sundaramoorthi
5. S.Ravikumar
6. S.Chinnadurai

...Respondents/ Defendants

This petition is coming on 18.07.2023 this day for final hearing before me in the presence of Thiru.M.Ponnusamy, Advocate for the Petitioners/plaintiffs and of Mrs.S.P.Mahalakshmi, Advocate for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents/defendants, and the 3<sup>rd</sup> to 6<sup>th</sup> respondents/defendants are called absent sect exparte and upon perusing the records and having stood over for consideration till this day this Court delivered the following :

**ORDER**

Petition filed by the petitioners under Order 26 Rule 9 and section 151 of CPC to appoint an Advocate Commissioner to note down the width of the suit cart track (Item 2) and to note down the physical features in and around the Items 1 and 2 of the suit properties described in the schedule below, lie of petitioners' land and respondents' properties and to file a detailed report and plan in the above suit.

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

1.1. The 1<sup>st</sup> petitioner is the 1<sup>st</sup> plaintiff in the suit. The petitioner have purchased specific acres 0.03 out of acres 0.04-3/4 in S.F.No.474/4 of

Moppiripalayam village from the 4<sup>th</sup> to 6<sup>th</sup> respondents. The sale deed dated 02.06.2016 of 1<sup>st</sup> petitioner right to use a North South cart track running along the eastern border of S.F.No.474 of Moppiripalayam village to reach 1<sup>st</sup> petitioner land in S.F.No.506 of Moppiripalayam village. The width of the suit cart track is 12 feet. The cart track is branching off from the North South Annur to Somanur main road and running East West along the Southern border in S.F.No.475/1A and running East West over S.F.Nos.475/1B, 475/2B, 475/3B, 475/4B, 475/5B, 475/6B and running East West along the Southern border of S.F.No.474/6 for 28 feet width and running as North South along the Eastern border of Moppiripalayam village. The suit cart track is North South cart track for 12 feet width running along the Eastern border of S.F.Nos.474/5 and 474/4 of Moppiripalayam village.

1.2. The 1<sup>st</sup> petitioner mother viz Karuppal wife of Maravalayan was entitled to entire acres 4.74 in S.F.No.506 and Southern acres.3.99-1/2 out of acres 7.99 in S.F.No.474 of Moppiripalayam village and other properties under a registered settlement deed dated 24.11.1954 executed by her sister Rasal wife of Maravalayan. The 1<sup>st</sup> petitioner mother had accepted the settlement deed dated 24.11.1954. The 1<sup>st</sup> petitioner mother Karuppal @ Karuppal died as intestate on 15.02.1979 leaving behind the petitioners and Raman @ Ramasamy as her legal representatives to succeed her properties. The 1<sup>st</sup> petitioner brother viz Lakshmanan died as intestate on 07.12.2011 leaving behind his wife and three daughters as his LRs to succeed his estate.

1.3. Under a registered release deed dated 10.10.2018 the 1<sup>st</sup> petitioner brother viz M.Ramasamy and his daughter viz Mahalakshmi had relinquished their share over entire acres 4.74 in S.F.No.506, cart track land of total acres.0.51-1/2 in S.F.No.474/6 of Moppiripalayam village in 1<sup>st</sup> petitioner favour. The Revenue records have been changed infavour of petitioners in respect of S.F.No.506 of Moppiripalayam village. The land in which cart track occupied in S.F.No.474/6 is belonged to the petitioners. The 1<sup>st</sup> petitioner entitled to an undivided 2/ 3<sup>rd</sup> share and the 2<sup>nd</sup> to 5<sup>th</sup> petitioners are jointly entitled to an undivided 1/ 3<sup>rd</sup> share over the Cart

track land in S.F.No.474/6.

1.4. The Periya Rakkiyagounder and others have partitioned their ancestral/joint family properties. Under 'A' schedule of the partition deed dated 24.01.1992, specific acres 0.96 and cart track land of Acres 0.03-1/2 out of acres 0.14 in S.F.No.474 and other properties were allotted to periya Rakkiyagounder and his son Sundaramoorthi viz the 4<sup>th</sup> respondent. The 4<sup>th</sup> to 6<sup>th</sup> respondents have created a false and wrong sale deed dated 05.07.2007 in respect of acres 0.89 out of acres 0.96 in S.F.No.474 to K.Muthusamy son of Karuppa gounder (3<sup>rd</sup> respondent). The 4<sup>th</sup> to 6<sup>th</sup> respondents have retained 4.75 cents on the East of acres 0.89 and West of suit cart track. While describing boundaries to acres 0.89 Eastern boundary is wrongly mentioned as S.F.No.507 instead of "12 அடி அகல தென்வடல் வண்டித் தடத்திற்கும் மற்றும் நாங்கள் நிறுத்தி கொண்ட ஏக்கர் 0.04-3/4 பூமிக்கு மேற்கு" the description of boundaries mentioned in the alleged sale deed dated 05.07.2007 are not correct.

1.5. The 3<sup>rd</sup> respondent has created a false and wrong sale deed dated 19.05.2015 in favour of 2<sup>nd</sup> respondent in respect of acres 0.89 in S.F.No.474/3 of Moppiripalayam village. Actually the vendors of the 3<sup>rd</sup> respondent viz the 4<sup>th</sup> to 6<sup>th</sup> respondents have already retained 4.75 cents on the East of acres 0.89 and West of suit cart track. While describing boundaries to sale deed dated 19.05.2015 for acres 0.89 in S.F.No.474/3, Eastern boundary is wrongly mentioned as S.F.No.507 instead of "12 அடி அகல தென்வடல் வண்டித் தடத்திற்கும் மற்றும் சுந்தரமூர்த்தி வகையறா நிறுத்தி கொண்ட ஏக்கர் 0.04-3/4 பூமிக்கு மேற்கு" the boundaries mentioned in the alleged sale deed dated 19.05.2015 are false and wrong. After the alleged sale deed infavour of 3<sup>rd</sup> respondent, the 4<sup>th</sup> to 6<sup>th</sup> respondents have jointly sold the item 1 of the suit properties to the 1<sup>st</sup> petitioner.

1.6. The partition deed dated 24.01.1992 Periya Rakkiyagounder and Sundaramoorthy had been specifically provided with suit cart track to reach common cart track provided in 14 cents in S.F.No.474 of Moppiripalayam village and reach their share in S.F.No.474, through the North South suit cart track running along the

Eastern border of S.F.No.474 of Moppiripalayam village. Even though the North South suit cart track was not specifically mentioned in the settlement deed dated 24.11.1954, the 1<sup>st</sup> petitioner mother Karuppal and other petitioners are enjoying the land in s.F.No.506 by taking all kinds of Vehicles, Tractors, Lorries, Vans and etc, through the suit cart track running along the Eastern border of S.F.No.474 of Moppiripalayam village. The 1<sup>st</sup> petitioner mother Karuppal and the petitioners are enjoying the 12 feet width North South suit cart track running along the Eastern village from the date of partition deed dated 24.01.1992 till this dated.

1.7. The Periya Rakkiya gounder's partition deed and the 1<sup>st</sup> petitioner sale deed that the petitioners are entitled to take cattle, carts, all vehicles over the North South suit cart track. The usage of bullock carts to collect the agricultural produce from the lands. The Karuppa was enjoying the suit cart track from the dated of settlement deed dated 24.11.1954 till her life time by taking all kinds of vehicles like Tractors, Lorries, Vans and etc, through the 12 feet width North South suit cart track to take agricultural produces and others. From the dated of death of 1<sup>st</sup> petitioner mother, the petitioners are enjoying their land in S.F.No.506 and the 1<sup>st</sup> petitioner enjoying the Item 1 of the suit properties in S.F.No.474 till this dated by taking all kinds of vehicles like Tractors, Lorries, Vans and etc., through the 12 feet width North South suit cart track. The suit cart track is well beaten and time immemorial one.

1.8. The respondents have colluded together and created false illegal, forged and void documents with intent to grab 1<sup>st</sup> petitioner land in Item 1 of the suit properties situated in S.F.No.474/4 of Moppiripalayam village and to defeat petitioners right and enjoyment over the suit cart track situated in S.F.Nos.474/5 and 474/4. Now the respondents are trying to reduce the width and trying to destroy the suit cart track (Item 2). Hence, it is very necessary for the petitioners to file this petition for appointment of Commissioner to show the actual width and other physical features in and around the Items 1 and 2 of the suit properties, lie of petitioners properties and respondents properties as on the date of the suit and file a detailed report and plan. Hence, this petition is to be allowed.

**2. The brief averments of the counter statement filed by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as follows:-**

2.1. The petition is false, frivolous, vexatious and unsustainable both in law and on facts. In fact in survey filed 474 there was a total extent of 3.99 – 1/2 acres which originally belonged to Chinna Rakkiyagounder, Periya Rakkiya gounder, Palanigounder and Rangasamy gounder. The said Chinna Rakkiya gounder, Periya Rakkiya gounder and the legal heirs of palanigounder namely natarajan, Duraisamy and Rangasamy gounder's legal heir namely Easwaramoorthy have all joined together and partitioned their properties to an extent of 3.99-1/2 acres. In this A, B, C, D schedules were made and in which A schedule properties are allotted to Periya Rakkiya gounder and his son Sundaramoorthi, B schedule properties are allotted to Natarajan, Duraisamy, C schedule properties are allotted to Chinn Rakkiya gounder, Marappan, Karuppusamy and Venkidusamy and D schedule properties are allotted to Easwaramoorthy. While partition of the said properties they have also provided cart track on the Northern side of said survey number 474 to an extent of 3-1/2 cents for each sharers totally to an extent of 14 cents. Subdivision was effected which was reflected in RSR and as per that the properties in S.F.No.474 was subdivided as S.F.No.474/1, 474/2, 474/3, 474/4, 474/5. In which properties in S.F.No.474/1 was owned by Easwaramoorthy, properties in S.F.No.474/2 was owned by Palani gounder, properties in S.F.No.474/3 was owned by said Periya Rakkiya gounder, properties in S.F.No.474/4 was owned by Chinna Rakkiya gounder, properties in S.F.No.474/5 was owned by Palanigounder. So the 4<sup>th</sup> to 6<sup>th</sup> respondents have no right to sell the properties owned by the Chinna Rakkiyagounder and his son in S.F.No.474/4. The said fact alone made it very clear that the sale deed dated 02.06.2016 is fabricated one. So the petitioners ar not entitled for any relief before this Hon'ble court based on the fabricated document.

2.2. The petitioners have owned only 3.99-1/2 acres in S.F.No.474/6 of Moppiripalayam village and out of which they have sold 3.70 acres to three different individuals for one R.K.Subramaniam 1.20 acres, N.Ramasamy 1.00 acres and

S.Govindasamy 1.50 acres for valuable sale considerations. Hence, out of 3.99-1/2 acres, the petitioners have retained only 0.29-1/2 acres which is left out for cart track running 30 feet on the Southern side of S.F.No.474/6 and running North South on the Eastern side of S.F.No.474/6 in 28 feet.

2.3. The partition deed dated 24.01.1992, the common cart track situated in Northern side of S.F.No.474 to an extent of 14 cents is mentioned. The petitioners themselves admit there was no mentioning about North South cart track in their settlement deed dated 14.11.1954. So now with ulterior motives, petitioners can't claim right over cart track which is in S.F.No.474 and its exclusive use of 1<sup>st</sup> and 2<sup>nd</sup> respondents, Easwaramoorthy heirs and Chinna Rakkiya gounder's sons.

2.4. The petitioners can't work out their remedy with the property of these 1<sup>st</sup> and 2<sup>nd</sup> respondents to have a cart track to reach their property in S.F.No.506. To create an illegal right, the 1<sup>st</sup> petitioner made a sale deed on 02.06.2016 and the same does not give a right to use suit track to reach their land in S.F.No.506 of Mopperipalayam village. Hence contra allegations in the affidavit is wrong. The petitioners are not approached this hon'ble court in clean hands. The petition ought to be dismissed.

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

Whether the petition under Order 26 Rule 9 and section 151 of CPC is to be allowed?

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

4.1. Heard both sides. Perused the records. The petitioners/plaintiffs filed for main suit for declaration to declare an extent of 3 cents in S.F.No.474/4 of Mopperipalayam village is absolute property of themselves and to declare the cart track right in Item No.2 take all type of vehicles to reach their land in S.F.No.506 of Mopperipalayam village. The petitioners/plaintiffs are purchased the suit property through sale deed dated 02.06.2016 and the 4<sup>th</sup> to 6<sup>th</sup> defendants are the vendors of the petitioners/plaintiffs. The 1<sup>st</sup> to 3<sup>rd</sup> respondents/defendants through their counter they have stated that originally this the S.F.No.474 is absolute property of one Rakkiya

gounder and they sold their entire extent in S.F.No.474, and finally they sold 89 cents in S.F.No.474 to one Muthusamy.

4.2. Further the said 4<sup>th</sup> to 6<sup>th</sup> respondents/defendants have no land left in S.F.No.474 as alleged by them as 7 cents remained out of 96 cents in S.F.No.474. Further the 1<sup>st</sup> to 3<sup>rd</sup> defendants stated that the suit Item No.2 cart track is only belongs to 1<sup>st</sup> to 3<sup>rd</sup> defendants and the plaintiffs are not having any right over the suit item No.2 of the cart track. Further the respondents/defendants challenged to the petitioners/plaintiffs' title deed dated 02.06.2016. Hence it is admitted the suit item No.2 is in existence in the field.

4.3. Hence, now the matter to be decided between the petitioners/plaintiffs and respondents/defendants is whether the plaintiffs proved their absolute right over the suit Item No.1 and cart track right over the suit Item No.2. Hence, by note downing the physical features of the cart track there is no prejudice to be caused to be respondents/defendants side.

*In the result, this court appoints Mr.V.Mohankumar, (M.S.No.1015/2014) Ph.No.9095533096 as Advocate Commissioner, directed to give notice to both parties to note down the width of the suit cart track Item No.2 and to note down the physical features in and around the Items 1 and 2 of the suit properties described in the schedule lie of petitioners' land and respondents' properties and to file a detailed report and plan. His remuneration is fixed as Rs.5000/- to be directly paid to the Advocate Commissioner by the petitioners/plaintiffs. Commissioner Report and plan call on 02.01.2024.*

Dictated to the Steno-typist and directly typed by her in computer, and corrected and pronounced by me in open court this the 22<sup>nd</sup> 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.3/2021 in  
O.S.No.218/2021  
Dated: 22.11.2023  
DMC, Sulur