

IN THE COURT OF THE DISTRICT MUNSIF, SULURPresent : **Tmt.N.Renuga., B.A., B.L.,**

District Munsif, Sulur

Tuesday the 5th day of December 2023**I.A.No.3/2023****in****O.S.No.313/2017**

R.Sekar

... Petitioner/Plaintiff

/VS/

1. Karuppusamy

2. Bakiyalakshmi

...Respondents/Defendants

This petition coming on 07.09.2023 for final hearing before me in the presence of Thiru.S.Murugasamy, Advocate for the Petitioner and Thiru.S.S.Vijayanand, Advocate for the Respondents and upon perusing the records, and this court made the following:

ORDER

This petition filed under section 151 of CPC to scrap the Surveyor plan and Advocate Commissioner report and plan filed on 01.11.2022

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

1.1. The plaintiff filed suit for declaration and permanent injunction regarding the suit cart track. As per order in IA.No.809/2017 on 14.07.2018 after measuring the suit property the Advocate Commissioner filed his report. At the time of inspection the Advocate Commissioner has given memo of instruction by the plaintiff but the Advocate Commissioner refused to measured the suit property as per the memo of instruction. Hence, there is a contradictions between Advocate Commissioner's report and his plan.

1.2. The suit cart track is having 6.2 meter width in re - survey No.92/1, at the point of H. But the Advocate Commissioner stated in his report as per the plan No.2 in S.F.No.92/2 there is an cart track is in existence. Further the Advocate

Commissioner stated in his report that there is an encroachment in point H to an measurement of 4.0 x 13.4 meters encroachment in the defendants property. Further the Advocate Commissioner has not stated the encroachment stated by the surveyor in his report. But the defendants has occupied 3 meters in the point H. hence, the remaining 3.2 meters alone is in enjoyment of the plaintiff as a pathway. Further the surveyor has stated that, there is an encroachment from point H to G in S.F.No.92/2. The plaintiff has not encroached any portion in the survey number 92/2. Further the defendants alone encroached S.F.No.92/1. But, the surveyor wrongly stated the points between F.G.H cart track is extended up to re-survey number 92/2. If these being the fact, the Advocate Commissioner's report and the surveyor report are drafted in biased manner. Hence, if it is accepted by this court, the plaintiff is put in to heavy loss and hardship. Hence, the petitioner filed this petition to scraping the Advocate Commissioner and Surveyor report.

2. The brief averments of Counter filed by the 1st Respondent adopted by the 2nd Respondent as follows:

2.1. The petition is not maintainable both in law and on facts. The Advocate Commissioner visited the said property along with the government qualified Taluk Surveyor. The suit property is duly measured by the Government Taluk Surveyor twice in the presence of the petitioner and respondents.

2.2. The petitioner voluntarily came forward for his own convenient and for the other pathway right holders including this petitioner/plaintiff, had increased the width of the said pathway from 6 mulam (9 feet) into 12 feet width out of his total extent of P.Ac.0.43 cents in S.F.No.92/2.

2.3. Subsequently, the said land purchased by the father of the respondent/defendants were sub divided into various as S.F.No.92/1, 2. The above application has been filed by the petitioner with a long delay and the filing of the above application is only an afterthought process to the petitioner. After the commission proceedings have been finished, the petitioner had filed the above application only with a view to delay the proceedings of the above main suit and to

harass the respondent by filing unnecessary applications. The Advocate/Commissioner acted upon the memo of instructions provided.

2.4. The cause of action for this application and the cause of action narrated in the petition are all hereby denied as false, imaginary and untrue. Hence, the petition ought to be dismissed.

3. Point for consideration:-

Whether the petition under section 151 of CPC is to be allowed?

4. Points:-

4.1. Heard the counsels for both the parties. The main suit is filed by the plaintiff for the relief of declaration to declare that the pathway stated in the rough plan between the points 'ABCDEFGH' is a common pathway for plaintiff and defendant and for the relief of Mandatory injunction to remove the encroachment between the points FGH from the suit cart track.

4.2. The petitioner filed IA.No.809/2017 to measure the suit cart track and the same has been allowed and the property has been inspected by the Advocate Commissioner along with Surveyor. They both has filed their report before this court on 01.11.2022. On perusal of records, the plaintiff and defendants' side has gave memo of instructions to the Advocate Commissioner before inspection of the suit property. The Advocate Commissioner has refused to act according as per the memo of instructions by stating reason that the plan has drawn according to FMB map and actual enjoyment of the cart track separately. The suit cart track has been subdivided as 92/1 of Kaduvettipalayam village. The Surveyor has filed three separate rough plans to show the existence of actual cart track as per Revenue record as Plan No.1 and the existing cart track as per enjoyment as Plan No.2 and 3.

4.3. The plaintiff is now filed this petition to scrap the Advocate Commissioner's report by stating reasons the Advocate Commissioner and Surveyor has mentioned the existing cart track as per enjoyment by encroaching land in S.F.No.92/2 from the point FGH as per plaint plan. Further as per Revenue records

the cart track has been sub divided as separately as 92/1.

4.4. The plaintiff is on the burden to prove the existence of cart track as 4 meter with in point ABCDEF and 6.2 meter width in FGH points. The Advocate Commissioner's and Surveyor report is only a supporting documents it has only corroborative value. It is not a substantial peace of evidence plaintiff has to prove his own case according to law. Further as per order 26 rule 10 of CPC it is mandatory provision that the court must record its dissatisfaction over the Advocate Commissioner's report and Surveyor report that to by examining the Advocate Commissioner and the Surveyor. If any Advocate Commissioner report is to be scraped the procedure mandatory to be followed according to law.

4.5. The plaintiff must established before this court that before measuring the suit property the memo of instruction has been given to the Advocate Commissioner and the Advocate Commissioner has not measured the property accordingly. Then they filed their report by non complying the memo of instructions. The plaintiff should filed their objections for the Advocate Commissioner report and the plaintiff must established the incorrectness of the Surveyor and Advocate Commissioner report by examining both persons and drawn this court attention towards dissatisfaction over the Advocate Commissioner's report. After that only, the plaintiff can ask for scrap of the previous Advocate Commissioner report or reissue or appointment of a fresh Commissioner. The plaintiff has not followed the procedure under order 26 rule 10 of CPC. Hence, this court can't order for scraping the Advocate Commissioner's report.

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

Dictated to the Steno-typist and directly typed by her in computer, corrected and pronounced by me in open court this the 5th day of December 2023.

District Munsif,
Sulur.

List of witnesses and document on Petitioner side:-

Nil

List of witnesses and document on Respondents side:-

Nil

District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.3/2023 in
O.S.No.313/2017
Dated : 05.12.2023
DMC, Sulur