

IN THE COURT OF THE DISTRICT MUNSIF, SULUR

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

District Munsif, Sulur

Friday, the 22nd day of November 2024

I.A.No.10/2024

in

O.S.No.937/2017

1. M/s.K.P.R.Cotton Mills Pvt Ltd.,

Rep by its Chairman K.P.Ramasamy

2. K.P.Ramasamy

3. K.P.Deivasigamani

4. P.Nataraj

...Petitioners/ 1st to 4th Defendants

/ Vs /

1. M.Deivasigamani (Died)

2. Subramaniam (Died)

3. Smt.Rajammal

4. Shanmugasundaram

5. Senthil Prakash

6. Maheshwari

7. Ms.Nikila

8. Minor.Gowri

...Respondents / Plaintiffs

This petition is coming on 01.10.2024 for final hearing before me in the presence of Mr.K.C.Loghanathan, Advocate for the Petitioners and of Mr.V.Raveendran, Advocate for 3rd to 8th 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

advocate commissioner to measure the property with the help of Taluk Surveyor and submit their report.

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

1.1. The respondents/plaintiffs have filed the suit for declaration of delivery of possession of 1st Item of suit property and for declaration and consequential permanent injunction in respect of 2nd Item of suit property and also for declaration against suit cart track in Item No.3 property and mandatory injunction.

1.2. The petitioners company had purchase (including individual names) the properties situated in S.F.Nos.194/1, 2, 3, 4 and 194/9-15 under doc.Nos.4121/2005 dated 07.07.2005 and 1362/2006 dated 21.02.2006 total extent is 17.92 acres. All the S.F.Nos were already sub divided even prior to their purchase and got sub division numbers separately. This fact can be seen in petitioners/defendants sale deeds. The petitioners/defendants are in possession of entire properties by cultivating crops.

1.3. As per revenue records, the total extent in S.F.No.194/9 is 0.59 acres and the petitioners/defendants have purchased the entire 0.59 acres and their name was also included in the patta. After getting exparte decree in the year 2017, the plaintiffs very cleverly included their name (Deivasigamani) in the patta based on the exparte decree. In fact they have no property or no right in S.F.No.194/9.

1.4. The respondents/plaintiffs are claiming that the petitioners/defendants encroached item No.1 of the suit property i.e., 0.64 ½ acres in S.F.No.194 since it is belonging to them. Initially the petitioners/defendants had purchased 1.48 acres in S.F.No.194/4 under doc.No.4121/2005 and the entire 1.48 acres is in petitioners/defendants possession. The petitioners/defendants purchased 0.59 acres in S.F.No.194/9 under doc.No.4121/2005 and 1362/2006 and the entire 0.59 acres is in petitioners/defendants possession.

1.5. The Surveyor, who measured the suit property in 2012, has filed the

report into this court and his report does not say anything about encroachment. The Surveyor measured part of the lands as per revenue records and gives his report in the year 2012. Infact, his report is incomplete and does not disclose the proper physical features of the properties. The extent of petitioners/defendants lands as per their sale deeds is one and the same even as per patta maintained by the Sulur Taluk Office. The respondents purchased properties in the year 1977 without sub division, whereas, the petitioners/defendants purchased the lands with sub divisions along with accurate measurements.

1.6. In the year 2012, the Surveyor did not measure petitioners/defendants properties. If petitioners/defendants properties are measured as per their documents or revenue records, it can be seen that the petitioners/defendants are in possession of their properties and no encroachment made on their part. The Surveyor, who measure the suit property, is not available and not examined before this court. The present Surveyor cannot speak about the method of survey which was done by his predecessor in the suit property. Hence, the petitioners/defendants filed this petition to measure petitioners/defendants property with the help of the present Surveyor. The report of the Surveyor is much essential to decide dispute. Hence, the petition.

2. The brief averments of counter statement filed by the 4th Respondent and adopt by 3rd and 5th to 8th Respondents as follows:

2.1. The description of property mentioned in the plaint is incorrect. The respondents have filed the suit in O.S.No.17/2010 on the file of the District Munsif of Palladam for the relief of recovery of possession in respect of the Item – 1 of the suit property and for other reliefs. Further the respondent filed an application in IA.No.58/2010 for appointment of Advocate Commissioner to visit and measure the suit property. Thereafter the advocate commissioner P.P.Subash Chandar give notice to the petitioner counsel with date and time intending to visit the suit property. The petitioner counsel endorsed that “the petitioner preferred to file revision against the order passed in the commission application in IA.No.58/2010”. Therefore either the

petitioner or his counsel are not co-operating with the commissioner for the measurement of the suit property with the assistant of Taluk Surveyor. Further the petitioner and his counsel are absent at the time of commissioners visit and measuring the suit properties.

2.2. The commissioner has visited the suit property on 25.03.2012 and filed his report at the earlier in the year 2012 itself. The petitioners/ defendants absolutely failed to file any objection for commissioner's report so far. Further the petitioners/ defendants absolutely failed to file any revision petition before the Hon'ble High court of Judicature Chennai against the fair and final order in I.A.No.58/2010.

2.3. Due to the bifurcation of the District, the Sulur Taluk was belonged to the Coimbatore District. Therefore the above suit was transferred to Coimbatore District Minsif Court in O.S.No.2824/2012. After few years the above bundle was transferred to this Hon'ble Court after establishment in O.S.No.937/2017. In the above court the defendant purposely and wantonly allowed the suit to set exparte and the exparte decree was passed on 24.11.2017. Thereafter the plaintiff filed an execution petition in E.P.No.9/2018 for delivery of possession. The notice in the above said E.P was served to the defendant. Thereafter the defendant entered into appearance in the above E.P and got adjournment for counter statement. Thereafter the defendant filed an application under section 5 of limitation act and another application to set aside exparte decree. After the enquiry the above two applications were allowed by the Hon'ble court. The defendant already protracted the trial proceedings for more than 14 years.

2.4. After closing the plaintiff side evidence and the defendant side evidence, the petitioner/defendants come forward with the vexatious application only with intent to protract the trial of the suit. 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. Perused records. On perusal of records the main suit is

filed for declaration and recovery of possession of Item No.1 of suit property. Further after appearance of the defendants previously in IA.No.58/2010 this court appointed Advocate Commissioner after visiting the property along with the surveyor by measuring the same. The Advocate Commissioner filed his report on 04.04.2012. After filing of the report either plaintiff or defendants has not raised any objection in respect of the Advocate Commissioner's report.

4.2. Further presently the suit is at the stage of defendants side further evidence. The Sulur Taluk Surveyor has been examined as DW.2 on the side of defendants on 29.08.2024. The petitioner has not initially stated any objection for the previous Advocate Commissioner's report. Further the petitioner has not produced any memo of instruction to the Advocate Commissioner before visiting the suit property in the year 2012. Already a commissioner report has been filed and being as Ex.C.1 to C.3 while examining the PW.1 in the year 2017. After 10 years the petitioner filed the present application to measure his property with their document by appointing a commissioner and Taluk surveyor.

4.3. The main burden of plaintiff is to prove the suit property is belongs to him and he is entitled for recover of the property. Further the case is pending more than 14 years now the petitioner come forward with the present application is only to drag the case. Hence, in the interest of justice without drawing the dissatisfaction over the previous Surveyor and Advocate Commissioner report under order 26 rule 10 the present application is not maintainable.

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 22nd day of November 2024.

Sd/N.Renuga
District Munsif,
Sulur.

List of witnesses and documents on Petitioners side:-

Nil

List of witnesses and documents on Respondents side:-

Nil

Sd/N.Renuga
District Munsif,
Sulur.

Draft/ Fair Order
I.A.No.10/2024 in
O.S.No.937/2017
Dated :22.11.2024
DMC, Sulur.