

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM
PRESENT: Tmt. SUGANIYA SRI B.A.,B.L (Hons), M.L., PGDAML
ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM
TUESDAY, THE 22nd DAY OF AUGUST 2023
IA.NO. 75/2023 IN OS.NO. 20/2023

Thillai Natarajan
represented by power Agent
Thirunavukkarasu

..... Petitioner/ Plaintiff

/Vs/

K. Chinnadurai @ Selladurai

....Respondent/ Defendant

For Petitioner	Thiru.N.Rajendiran,Advocate
Respondent	Tmt.P.Geetha, Advocate No counter endorsed by the respondent.
Relief Claimed	Petition filed under Order 26 Rule 9 of CPC to appoint an Advocate as Commissioner directing him to inspect the suit property with help of qualified surveyor, find out the existing features in the suit property, and file a detailed report into court and for costs.
Final Hearing	19.6.2023

Upon hearing the arguments of petitioner and respondent and after perusal of the entire records and having stood over for consideration till this day, this court delivers the following

ORDER

The case of petitioner:

1. The petitioner is the father and power agent of the plaintiff. The respondent is the defendant. The suit property is located in R.S. No. 34/24 Western 0.04 cents in Northern 0.08 cents out of 0.21 cents situates in the village of Ayeepettai, chidambaram Taluk. It is classified as Punja. The property in R.S.No.34/24 Western 0.04 cents in Northern 0.08 cents out of 0.21 cents originally belongs to Amirthalingam. On 26.11.1970, Amirthalingam sold R.S.

N. 34/24 Northern 0.08 cents out of 0.21 cents to Venkatesan for a proper consideration of Rs.240/- Subsequently, on 21.2.2008 Venkatesan's son Anandan sold Western 0.04 cents in Northern 0.08 cents out of 0.21 cents to Nagavalli for a proper consideration of Rs.1,50,000-. When Anandan sold the property, there was a RCC roof building. On 8.8.2013, the petitioner purchased the suit property from Nagavalli for a proper consideration of Rs.5,64,500-. Since the date of purchase, the petitioner has been in possession and enjoyment of the suit property. The petitioner and his family members have been living in the suit property. In the front side of the house, there is a Tin Sheet shed and there is also a drinking water Tap connection and Electric Service Connection to his house. In the eastern side back yard there is Toilet and bath room and he has raised 4 coconut trees, 1 Mango tree and a tamarind tree in the back yard. The petitioner has also installed a bore set. Since the date of purchase, the petitioner has been in possession and enjoyment of the suit property. The petitioner's vendor Nagavalli was living along with her family member in the house. The defendant's property is to the west of the suit property and it is a vacant site. The petitioner is in possession and enjoyment of the entire 0.04 cents and the suit property is fenced in all the four sides. The defendant on 2.1.2023 removed the fence between the petitioner and the defendant's property. When the petitioner questioned about the atrocious act of the defendant, he said that he is going to put up a building in the property. The petitioner contends that the defendant has no right to remove the fence and no right to construct any building in the suit property. The respondent said that he is going to construct to building in that property which belongs to him. The petitioner wanted and attempted to measure the suit property 9.1.2023 for which also he is not willing. He gathered bricks, sand, cement, etc., for the construction of the building. The defendant's action is high handed and illegal. The defendant has no right to construct any building in the suit property. He has neither right nor title over the suit property. In order to find out truth, appointment of Advocate Commissioner is necessary. If commissioner is appointed with a direction to inspect the suit property, note down the physical features, measure the suit property, find out the existing illegal construction in the suit property put up by

the respondent, and file a detailed report into court, the court can easily come to the correct conclusion and it will reduce voluminous cross examination. No hardship will be caused to the respondent if commissioner is appointed. Hence, this petition.

2. No counter endorsed by the respondent.

3. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

4. On the side of petitioner, no oral and documentary evidence was let in.

Points for consideration:

5. Heard both sides learned counsels. Material records perused. This is the suit filed for the relief of declaration and consequential injunction. The suit property is located in R.S. No. 34/24 Western 0.04 cents in Northern 0.08 cents out of 0.21 cents situates in the village of Ayeepettai, chidambaram Taluk. According to the plaintiff, the suit property originally belongs to Amirthalingam. On 26.11.1970, Amirthalingam sold R.S.No.34/24 Northern 0.08 cents out of 0.21 cents to Venkatesan for Rs.240/-. Subsequently, on 21.2.2008 Venkatesan's son Anandan sold Western 0.04 cents in Northern 0.08 cents out of 0.21 cents to Nagavalli for Rs.1,50,000/-. When Anandan sold the property, there was a RCC roof building. On 8.8.2013, the petitioner purchased the suit property from Nagavalli for a proper consideration of Rs.5,64,500-. In the eastern side back yard, there is Toilet and bath room and the petitioner has raised 4 coconut trees, 1 Mango tree and a tamarind tree in the back yard and has also installed a bore set. Since the date of purchase, the petitioner has been in possession and enjoyment of the suit property. The petitioner's vendor Nagavalli was living along with her family member in the house. The defendant's property is to the west of the suit property and it is a vacant site. The petitioner is in possession and enjoyment of the entire 0.04 cents and the suit property is fenced in all the four sides. The defendant on 2.1.2023 removed the fence between the petitioner

and the defendant's property. The petitioner wanted and attempted to measure the suit property on 9.1.2023 for which also respondent is not willing.

6. On perusal of records, it is seen that the plaintiff alleges that he has purchased the suit property through registered sale deed. The suit property is located in S. No. 34/24 to an extent of 4 cents in Ayipettai village inclusive of the thatched house in 558 sq.ft with RCC sheet. Originally, the property in S.No.34/24 is comprised to an extent of 21 cents and the suit property originally belongs to one Amirthalingam who has sold the same to one Venkatesan on 26.11.1970 and the said Venkatesan's son by name Anandan has sold it to one Nagavalli. At that time when Venkatesan sold the property there was a RCC roof building. On 8.8.2013, the plaintiff has purchased the same and was in its absolute possession. The suit property is the western 4 cents in northern 8 cents out of 21 cents. On the other hand, the defendant's property is located to the west of the suit property and it is a vacant site. The plaintiff has fenced the 4 sides of the suit property, but the defendant removed the fence and he has also attempted to encroach upon the suit property and when the plaintiff wants to measure the suit property the defendant is preventing the same. Admittedly, the defendant is the adjacent owner. Furthermore, there is a dispute with regard to location of the suit property and defendant's property. The defendant counsel has endorsed "NO OBJECTION" for this petition.

7. It is to be noted here that when the plaintiff and defendant are adjacent owners and there is a dispute with regard to locating suit property, only when the commissioner is been appointed, they will be a clarity as to whether the defendants has made any construction in the suit property as alleged by plaintiff. The oral evidence and documentary evidence adduced by both the parties alone will not be sufficient in this case as such the physical features has to be noted down and suit property has to be measured along with the help of Taluk Surveyor. On perusal of provision of Order 26 Rule 9 of CPC, it is clear that the said provision can be invoked to elucidate the matter in dispute.

Considering the entire facts and circumstances of this case, this court is inclined to allow this petition.

In the result, this petition is allowed. Thiru.T.Amudan, Advocate is appointed as Advocate Commissioner. The Advocate Commissioner is directed to inspect the suit property and note down the physical features and measure the suit property and find out the existing features in the suit property with help of Taluk surveyor. Further, he is directed to file report and plan along with Surveyor's report and plan. The remuneration of the Advocate/Commissioner is fixed as Rs. 8000/- by this court. The said amount has to be paid by the petitioner to the Advocate/Commissioner as directly within 20.9.2023 and memo has to be filed in this regard. The Advocate Commissioner's report and the Surveyor's report along with plan shall be filed without unreasonable delay. Call on 20.9.2023

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 22nd day of August 2023.

(Sd/-S.Suganiasri)
ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM

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

NIL

List of witnesses and documents on the side of the respondent:

NIL

(Sd/-S.Suganiasri)
ADDITIONAL DISTRICT MUNSIF,
CHIDAMBARAM