

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML

ADDITIONAL DISTRICT MUNSIF, CHIDAMBARAM

THURSDAY, THE 3RD DAY OF NOVEMBER 2022

IA.NO. 139/2020 IN OS.NO. 128/2020

1. G.Natarajan

2. N.Vinayagam

rep by his power agent/

Father G. Natarajan (1st plaintiff)

....Petitioners/Plaintiffs

/Vs/

Thiyagarajan

....Respondent/Defendant

For Petitioners	Thiru.N.Sethuraman, Advocate
Respondent	Thiru.A.Sambandam, Advocate
Relief Claimed	Petition filed under Order 26 Rule 9 of CPC to issue the commissioner warrant so as to inspect the suit property
Final Hearing	16.08.2022

Upon hearing the arguments of petitioner and respondents 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 petitioners are plaintiffs and respondent is the defendant in the suit. The suit is filed for the relief of declaration of title and for the permanent injunction. The plaintiffs are the owners of a house bearing Door No. 35 in Chinnappa Mudaliar street, Keezh Bhuvanagiri and it was built 50 years before. Formerly the street was called sengunthar street. The East to West measurement of the house is 44 ½ feet. This is inclusive of the two walls on the West and East. This house and other adjoining houses which are facing the street on the south are having the mother wall on the West. The said house is the ancestral property of the plaintiffs. There was a partition in the year 1939 October between two parties namely

Govindasamy and Narayanasamy, who are the sons of Veerappa Mudaliar. Govindasamy got A-schedule in the partition and Narayanasamy got B schedule in the partition. The suit property is found as item No. 73 in A-schedule. On 29th July 1957, Govindasamy gave the settlement of this house to his son Ganesa Mudaliar. Ganesa Mudaliar accepted the settlement and got possession. There was an oral partition between Natarajan 1st plaintiff and others and subsequent to the oral partition on 6.8.2002 there was a family arrangement. In that family arrangement, one of the sons of Ganesa Mudaliar namely Sivarajan got the suit property.

2. Thereafter, under the exchange deed dated 18.2.2010, Natarajan got the property and subsequent to which a settlement was executed to his son V.Vinayagan by means of a Registered Settlement Deed dated 3.10.2011. Vinayagam had to go to abroad and therefore he executed a power of attorney to his father Natarajan on 3.10.2011. There is no dispute with regarding the title of the house bearing Door No. 35. There is no dispute with regard to the Western mother wall of the plaintiffs. All the registered deeds have a reference to the natural western mother wall. Now the dispute is only with reference to the Eastern mother wall. This Eastern wall was particularly purchased by the ancestor Veerappa Mudaliar in the year 1915 February 3rd from ponna Mudaliar who was owning Eastern house, and he sold suit wall namely East to West 2 human feet which is lying in between Door No. 35 and 34 to plaintiff predecessor in title and he was enjoying openly uninterruptedly. Actually Door No. 35 now measures East to West 44 ½ Ft and this two human feet wall had become part and parcel of Door No. 35. The defendant is trying to demolish the wall. The defendant has no right in the wall and now he is attempting to demolish the same in the first week of October 2020. The petitioner prevented the defendant from demolishing the existing suit wall. Hence, this petition is filed to appoint an Advocate Commissioner immediately to inspect the suit property and measure the property of the house bearing Door Nos. 34, 35 of Chinnappa Mudaliar Street, Bhuvanagiri including the suit wall.

The case of Respondent:

3. The respondent vehemently oppose the petition filed by the petitioner. Similarly the petitioners or their predecessors in title never claimed or enjoyed the suit wall either as part of their house in DoorNo. 35 or otherwise. As stated therein, the suit wall was not the subject matter of the documents dated 3.2.1915. On the basis of which the petitioners claim right and title to the suit wall and that That document relates to the wall in between door No. 32 and 33. The suit wall is the western mother wall of this respondent house in Door No. 34. This respondent house has tiled roof and the entire roof rests upon the suit wall. The wall starts from the street and extended upto the northern boundary line. The suit wall on the western side of the respondents house commences from the boundary line of the street on the north south measurement of the respondent property and it is 120 feet.

4. The petitioner's brother Sivaraj, to whom the property in Door No. 35 was allotted had a small terraced building in his backyard, adjoining the suit wall of the respondent and that was even nearly 45 years old. Because of the weak construction, the terraced building collapsed in the year 2007, and portions of the suit wall of the respondent property was damaged. After removing the debris, when the respondent took steps to repair his wall and plaster the same, the said Sivaraj raised some objections. Thereupon, the respondent filed a caveat before this court. The aforesaid Sivaraj also filed a caveat with a false averments that he is entitled to 45 feet east west and that the suit wall also belongs to him. Thereupon, in reply to the caveat this respondent issued a notice to the advocate for Sivaraj setting out the details of his right and title to the suit wall. Realizing that he has no title to the suit wall, the said sivaraj kept quite. Now from the documents filed along with the plaint, it can be seen that the 1st petitioner in collusion with his brother Sivaraj has created the exchange deed dated 18.2.2010, the settlement deed dated 3.10.2011 and the power deed of the same date, by including the suit wall as their property and separately describing it as Item. No.2. The petitioners have no title to the suit wall and neither they nor their predecessor were ever in possession and enjoyment

of the same. It is only after such construction, the petitioners have hatched a scheme to file this false suit using the documents which have no connection with the suit wall, and by using the documents created after 2007 with false recitals. The petitioners never own or enjoy 44 ½ feet either as per documents or other public records or in reality. The entire roof of this respondent's house rests on the suit wall, and hence the respondent is not intended to demolish the same. Hence, the respondent prays for the dismissal of this petition.

5. Now the point for consideration is whether the petitioners are entitled to get the relief as prayed for?

6. On the side of both parties, no oral and documentary evidence was let in.

Points for consideration:

7. Heard both side learned counsels on record. Material records perused. This is the suit filed for the relief of declaring the plaintiff's title to the suit wall and thereby granting permanent injunction restraining the defendant from causing any damage to the existing wall. The suit schedule property measures to an extent of 1 ½ feet and it is the compound wall. This is the petition filed under Order 26 Rule 9 of CPC, to appoint Advocate Commissioner to inspect the suit property and measure the house bearing No.34 and 35 of Chinnappa Mudaliar Street, Bhuvanagiri. It is to be noted that the plaintiff Door Number is of 35 and defendant's Door Number is of 34. The entire dispute in the suit is that of the compound wall in between the Door Number 34 and 35 whereas the plaintiff claims the compound wall to be his own and the defendant alleges that the compound wall is part and parcel of his property.

8. According to the plaintiffs, the compound wall which is lying to the east of his house was purchased by his ancestor Veerappa Mudaliar in the year 1915 from Ponna Mudaliar who was the owner of eastern house sold suit wall ie., east to west two human feet extent which is lying in between Door Number 35 and 34. From then on, the said eastern wall was uninterruptedly enjoyed by the plaintiff's after acquiring the title and according to the plaintiff it has become part and parcel of

Door Number 35. On the other hand, the defendant states that the sale deed dated 3.2.1915 pertains to the suit wall between the Door Number 32 and 33. And the Subsequent document dated 18.2.2010 the exchange, the settlement deed dt: 3.10.2011, the power deed thereof where all created particularly so as to create rights in favour of plaintiff for the said suit wall.

9. According to this court, when the plaintiff himself base his title upon the suit wall on the document dated 1915, this court does not find any reason to why the Advocate Commissioner should be appointed so as to find out in whose possession the compound wall lies. The appointment of Advocate Commissioner would amount only to collection of evidence in the present suit. The case of the plaintiff has to be proved by letting in evidence and not to collect the evidence through Advocate Commissioner. It is upto the parties to prove the title to the suit wall and this petition is absolutely devoid of merits

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

Order directly dictated to Steno-Typist, typed by her, corrected and pronounced by me in the Open Court on this, the 3rd day of November 2022.

(Sd/-S.Suganiasri)
Additional District Munsif,
Chidambaram.

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

NIL

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

NIL

(Sd/-S.Suganiasri)
Additional District Munsif,
Chidambaram.