

**IN THE COURT OF PRINCIPAL DISTRICT
MUNSI, CHIDAMBARAM**

PRESENT: Tmt. S.SUGANIYA SRI B.A.B.L (Hons), M.L., PGDAML
PRINCIPAL DISTRICT MUNSI, CHIDAMBARAM (FAC)
MONDAY, THE 10TH DAY OF JULY 2023
IA.No.380/2022 in OS.197/2014

1. Nagarasu
2. Velmani

..... Petitioners/Defendants

/Vs/

1. Manickavasagan
2. Velmurugan
3. Krishnamoorthy

....Respondents/plaintiff/
2 & 3 defendants

For Petitioners	Thiru.B.Kulamani, Advocate
Respondents No.1	Thiru.P.Gopalakrishnan, Advocate
Respondent No.2,3	Exparte in suit
Relief Claimed	Petition filed under Order 26 Rule 9 of CPC & Rule 75 of Civil Rules of Practice to appoint advocate commissioner to measure the suit property with the help of Taluk Surveyor and to file the detailed report with plan to prove the possession of defendant over the suit property.
Final Hearing	14.6.2023

Upon hearing the arguments of both sides and on 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 the defendants and 1st respondent is the plaintiff, 2 and 3 respondents are also the defendants in the suit.

The suit is filed for the relief of declaration and recovery of possession. The petitioners are cultivating the suit property for many years. The plaintiffs have forged certain documents and obtained patta in their name so as to file the suit. Therefore, it is necessary to appoint advocate commissioner to inspect the suit property and note down the boundaries to prove the petitioner's longstanding possession. The same will also reduce the oral evidences in the court.

The case of Respondent:

2. The respondent vehemently oppose the petition filed by the petitioner and put the petitioner to the strict proof of the same. The petitioners have alleged in their written statement that there are in the possession of suit property as a cultivating tenant. According to the plaintiff, the possession of defendant in suit property is illegal. While being so, the suit for declaration and recovery of possession is filed. Therefore, the appoint of advocate commissioner is an unnecessary one. Hence, the respondent prays for the dismissal of this petition with costs.
3. No oral and documentary evidence produced.
4. Now the point for consideration is whether the petitioner is entitled to get the relief as prayed for?

Points for consideration:

5. Heard both sides learned counsels. Material records perused. This is the petition filed to appoint the advocate commissioner to measure the suit property with the help of Taluk Surveyor and to file the detailed report with plan to prove the possession of defendant over the suit property. This is the suit filed for the relief of declaration and recovery of possession. According to the

plaintiff, the defendant is in the illegal occupation of suit property and on the other hand, the defendant alleges that he is a cultivating tenant under one named Krishnamoorthy since 25.6.1992.

6 On perusal of provision of Order 26 Rule 9 of CPC, it is clear that the said provision can be invoked elucidate the matter in dispute. According to this court, there is no dispute as regards the possession of defendant in the suit property. The suit itself is filed for the recovery of possession and the plaintiff has alleged that the possession of defendant in suit property is illegal. While being so, this petition is filed to appoint advocate commissioner to prove the possession of defendant in suit property. Therefore, in the considered view of this court, this petition is completely devoid of merits and this court in the interest of justice, is of the view that this petition has to be dismissed.

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

Dictated to the steno-typist, transcribed by her and typed in computer, corrected and pronounced by me in the open court this the 10th day of July 2022.

(Sd/-S.Suganiyasri)

Principal District Munsif,
Chidamabaram.(FAC)

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.Suganiyasri)

Principal District Munsif,
Chidamabaram.(FAC)