

**IN THE COURT OF DISTRICT MUNSIF CUM JUDICIAL
MAGISTRATE, SHOLINGANALLUR.**

PRESENT: Thiru. K. Karthik, M.L.,
District Munsif cum Judicial Magistrate,
Sholinganallur.

Monday, the 16th day of December 2024

I.A 3/2024 in

O.S No:841/2024

1. P. Baskar, S/o. K. Panchanathan
2. Machagandhi, W/o. K. Panchanathan
3. P. Elangovan, S/o. K. Panchanathan
4. Arulmozhi, D/o. K. Panchanathan
5. V. Vimala, D/o. K. Panchanathan
6. Ramani, D/o. K. Panchanathan
7. Renitha, D/o. K. Panchanathan

---1st to 7th Petitioners/ Defendant

-Versus-

- 1) P. Saravanan, S/o. R. Panchanathan

---Respondent/ Plaintiff

This petition came up for final hearing on 05.12.2024 in the presence of advocate M/s. T.S. Arun Kumar, R. Manikandan, M. Kavikannan, Sadhasivam, R. Vinoth and Muthuguru counsels appearing for Petitioners/ Defendant, M/s. A. Vivek, E. Jeyanthi and S. Sathiyannarayanan counsels appearing for the Respondent/ Plaintiff. Upon hearing both side enquiry, perusing relevant records and having stood over the evidence till the day, this court delivering the following.,

ORDER

This application has been filed by the petitioner under order, XXVI Rule 9 of CPC, to appoint an Advocate Commissioner to inspect the suit property with the help of the Surveyor and in particular, to measure the suit property with the help of the title deeds of the petitioner/ 1st defendant and the respondent/ plaintiff and file his report and thus render justice.

2. Brief averments of the petitioner in short are as follows:

(i).The counsel for the Petitioner/Plaintiff would submit that the 1st petitioner herein and the 1st defendant in the above suit and as such he is well aware of the facts of the case. He is filing this affidavit on his behalf and on behalf of he other petitioners. The Petitioners submit that the respondent herein filed the above suit for Permanent Injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property.

(ii).The counsel for the Petitioner/Plaintiff would submit that their father K. Panchanathan purchased the property measuring an extent of 2240 sq.ft. Comprised in S.No. 13/6A3, Injambakkam, Village, then Saidapet Taluk, Kancheepuram District from Rukkumani Ammal and another and the same was registered as Document No. 1453 of 1981 on the file of Sub Registrar Office at Saidapet. Pursuant to the long possession and enjoyment of the land measuring an extend of 2609 sq.ft., his name was mutated in the revenue records and Patta No. 500 was also granted in his name. The petitioners submit that K. Panchanathan died on 28.12.2012 leaving behind his wife Machagandhi, sons Illangovan, Anbulingam Baskar, daughters Arulmozhi, Vimala, Ramani, Renitha and the above said legal heirs inherited the suit schedule property from the said K. Panchanathan. The petitioner submits that Machagandhi, Illangovan, Anbulingam, Arulmozhi, Vimala, Ramani, Renitha executed the Deed of Release dated 25.08.2014 and thereby released their 1/7th undivided share in the suit property to the 1st Petitioner herein and put the 1st petitioner into possession of the suit

property. The 1st Petitioner also mutated his name in the revenue records.

(iii).The counsel for the Petitioner/Plaintiff would submit that the father name of the Petitioners and respondent are the same viz Pachanathan initial is only different. Taking advantage of the same, the respondent herein impersonated his father as the petitioner's father and purportedly executed the sale deed in respect of the suit property in the year 1994 and the same was registered as Document No. 5499 of 1994 on the file Sub-Registrar office at Adyar and the same is sham and nominal. The Petitioner does not know the existence of the above sale deed till the year 2016. During the year, 2016 the respondent was trying to disturb the Petitioner's peaceful possession of the suit property; he was constrained to file the suit in OS.No. 579 of 2016 before the Hon'ble District Munsif Court at Alandur for Permanent Injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property, wherein the respondent herein filed the counter affidavit stating that the purchased the suit property from Panchanathan by Sale Deed dated 29.12.21994 and registered as Document No. 5499 of 1994. The petitioner submits that taking advantage of the similarity of the name, the respondent herein fraudulently registered the above sale by using his father as the petitioner's father. After perusing the counter-statement of the respondent in the above suit, the petitioner filed another suit in OS.No, 285 of 2017 before the Hon'ble District Munsif Court of Alandur for declaration that the Sale Deed dated 29.12.1994, registered as Document No. 5499 of 1994 is null and void and the same is not binding on the petitioner and unfortunately the above suit was dismissed for default for non appearance of the petitioner's previous counsel. The petitioner is taking steps to file the application to restore the suit.

(iv). The counsel for the Petitioner/Plaintiff would submit that the respondent's father and brother purchased the property which is adjacent to the petitioner's property. The petitioner submits that the respondent demolished the wall which was bifurcated from the suit property and the property purchased in the name of

panchanathan and Naveen thereby trying to make confusion in denitrification of the 1st petitioner property which is described in the suit schedule.

(v).The counsel for the Petitioner/Plaintiff would submit that the petitioner is filing this application to appointment of an Advocate Commissioner to inspect the suit property with the help of the Surveyor and in particular, to measure the suit property with the help of the title deeds of the petitioner/ 1st defendant and the respondent/plaintiff and file his report and plan for the proper adjudication of the issues involved in the suit. If this application is not allowed the petitioner will be put to great hardship and irreparable injury, on the other hand no prejudice will be caused to the respondent.

3. Brief averments of the counter filed by the Respondent/Plaintiff are as follows:

(i). The counsel for the Respondent/Defendant would submit that the respondent/defendant is the case as such he is well acquainted with the facts and circumstances of the case. He gave leave of this Honorable court the Plaint may be read as part and parcel of this affidavit also. He submit that he has filed the above suit for Declaration to declare that the Release Deed Registered in Doc. No. 5956/2014 dated 25.08.2014 before the Sub Registered office Neelankarai as Null and Void and not binding on the plaintiff, by sending a copy of its Decree to enter the same in the book maintained in the office of Sub-Registrar, Neelankarai, and Permanent Injunction restraining the 1st respondent his men agents and others acting or claiming through him on his behalf from alienating the suit property in any manner, and to pay the cost.

(ii). The counsel for the Respondent/Defendant would submit that on 29.12.1994 after verified all relevant document he has purchased two adjacent properties (Vacant land) in the Injambakkam Village by a duly registered sale deed

on the file of the SRO Adayar vide Document No. 5498/1994 to an extend of 4137 sq.ft and Document No. 5499/1994 to an extend of 2000 sq.ft totally 6137 sq.ft., and the revenue official issued Patta in his favour vide patta No. 6249. He has constructed a compound wall and obtained all necessary approval from the Govt. for construction, he has constructed house in his property by obtaining loan from the Bank of India, now he is in possession and enjoyment of the house property.

(iii). The counsel for the Respondent/Defendant would submit that it is relevant to mention here in the above two vacant lands one was belongs to the petitioners/defendants father late K. Panchanathan during his life time on 29.12.1994 he sold the same in favour of his by a registered sale deed the petitioners/ defendants knows that he is a Doctor specialist in Orthopedics surgery and very soft in nature and they are residing in the same area taking advantage of the situation they created a forged document with the help of M.G. Dhamu the Sub-Registrar of Neelangarai to grab his property which was sold by the petitions father. The said Sub-Registrar of Neelangarai M.G. Dhamu was removed from service and sentenced for imprisonment for his criminal activities.

(v). The counsel for the Respondent/Defendant would submit that it is relevant to mention here based on the forged document the 1st petitioner has filed an injunction suit and the same is pending in this Hon'ble court in O.S.No. 752 of 2024. Generally appointment of advocate commissioner petition will be filed by the adjacent property owner, in this case the petitioners are having no land property adjacent to his property. Now the case is pending in argument stage, since the DW1 was not cross examined he has filed a petition to reopen the case and re call the DW1 for the purpose of cross examination. The petitioners main intention is to delay the case proceeding the is why they are filing this petition in this advanced stage.

(vi). The counsel for the Respondent/Defendant would submit that if it is necessary it is always open to the petitioners they can file a petition for appointment of advocate commissioner in O.S.No. 752 of 2024 to prove their case, if they are having any patta land as mentioned in their plaint in O.S.No. 752 of 2024, where is the question of appointment of advocate commissioner since the present suit is for declaration of Document as null and void and the petitioners are trying to deviate the issues of this case. The petitioners are always giving mental stress to him because of the petitioners mental stress he is not able to concentrate his professional work and this is a long pending case. If this petition is allowed, he will be put into irreparable loss and hardship on the other hand no prejudice will be caused to the petitioners. In the interest of justice it is just fit and necessary to dismiss the present petition with cost. He may be permitted to raise additional points if any at the time of argument.

4. Now, the points for consideration is that whether this petition filed Under Order 26 Rule 9 CPC has to be allowed or not?

5. The petition, counter and other materials available on records were carefully perused.

(i) It is pertinent to take note that initially this suit was filed for declaration of title and permanent injunction. Yet another suit was filed by this petitioner/defendant also before the same court for declaration and injunction. The main issue of the suits are that the suit schedule property belongs to the petitioner/defendant in one suit and respondent/plaintiff of another suit. The subject matter is one and the same but only the problem arose with the similarity persists in the name that is panchanathan. Now both the parties are claiming over the title of suit schedule property with consequence injunction. The counsel for the petitioner would submit that if an advocate commissioner is been appointed to survey the land with specific needs and found the entire dispute between the petitioner/defendant and the respondent/plaintiff will come

to an end. On the other hand it is vehemently argued by the respondent/plaintiff that since both the parties are claiming over the same title an advocate commissioner cannot be appointed till the right of an title is been decided.

(ii) On the cumulative view obtained from the above said discussions it is pertinent that both the parties claiming over the title of same schedule of property by using the similarity of the name Panchanathan. On taking into consideration of the pleadings this court comes an conclusion that if an advocate commissioner is been appointed some more clarity can be obtained in deciding the right of title between the parties. Apart no prejudice would cause to both the parties an appointment of advocate commissioner rather it aids this court to find out the right of parties over the suit schedule property. Therefore in interest of justice this court inclined to allow this application and there by advocate Mr. P. Dhamodharan is appointed as advocate commissioner to inspect the suit schedule property with an aid of VAO and Surveyor in particular to measure the suit property with the help of title deeds of the petitioner/defendant and the respondent/plaintiff and file his detailed plans and sketch before this court on or before 27.01.2025. The remuneration of Rs.8,000/- to be paid directly to the advocate commissioner by the petitioner/defendant counsel. The advocate commissioner heard by direct to issue notice to both parties intimating prior with the date and the time of inspection of suit schedule property. Further is directed to pay the batta for the revenue officials warranting them to be present on the suit schedule property with the necessary and relevant revenue records. Accordingly this petition is allowed with above said directions.

In the result, the petition is allowed. No Cost.

Directly dictated to the Steno-typist, typed by her, corrected and pronounced by me in open court, this the 16th day of December 2024.

PETITIONER AND RESPONDENT SIDE WITNESS AND DOCUMENTS: NIL