

IN THE COURT OF THE DISTRICT MUNSIF-CUM-JUDICIAL MAGISTRATE
THIRUKALUKUNDRAM

PRESENT: **Thiru. K. Yuvaraj, B.A.,B.L.,**
District Munsif-Cum-Judicial Magistrate,
Thirukalukundram.

Wednesday the 20th day of November 2019

I.A. No. 30/2018

in

O.S.No. 4/2018

...

Thanikachalam

...Petitioner...

/Vs/

1. R.Velu

2. Murugesan

3. Sundari

..Respondents ...

This Petition coming before me today for final hearing in the presence of Thiru.P.Shankar Babu and Thiru.G.Kumaran, learned Counsels for the Petitioner and Thiru.J.Baskaran and Thiru.R.Venkatesh, learned counsels for the Respondents. Upon perusal of documents and hearing arguments on both side and having stood over for consideration till this date, this court delivers the following.

ORDER

The petitioner has filed this petition under Order 26 Rule 9 of CPC to order an appointment of an Advocate Commissioner to measure the suit "A" Schedule mentioned property with help of Taluk Surveyor and to note down the physical features in the suit property and submit his report with plan and pass such suitable orders.

1. The averment in affidavit along with petition in brief:

The suit "A" Schedule property is a Grama Natham house site, the said "A" Schedule mentioned property originally owned and possessed by petitioner and Anjalakshi, W/o.Rangasamy. The Revenue Authority have acknowledged their

possession and issued Grama Natham Patta, (Patta No.2556) for the below mentioned property. "A" schedule property in the name of Anjalakshi wife of Rangasamy Naicker and his self – Thanickachalam Naicker the Petitioner/Plaintiff herein. The said property is orally partitioned between petitioner and Anjalakshi and both are placed in possession and lawful enjoyment of their respective share in "A" schedule property till now.

It is stated that, after the death of Anjalakshi, the respondent are the sole heirs, i.e. respondents 2 and 3 are the grandson and 1st respondent is son of said Anjalakshi. The respondent 1 and 2 are now in possession on the western side of 5-1/2 cents of the Anjalakshi share of the below mentioned "A" schedule property. The remaining 5-1/2 cents were allotted to petitioner and he is in possession and enjoyment of the eastern side of "A" schedule property which is described as "B" scheduled property. The respondent are now intending to deprive his rightful share in the 5-1/2 cents in eastern side of the "A" schedule property.

The 2nd respondent is attempting to Trespass "B" schedule property with intent to defraud and deprive the rightful share of petitioner in the "B" schedule property. The petitioner is entitled for the eastern half share in the property as per the possession and enjoyment and upon oral partition as on date of granting patta. Meanwhile, the petitioner have made several requests to get registered partition deed as agreed orally in respect of "A" schedule property, but all the respondents are being the sole legal heir of Anjalakshi have not showing any interest in complying the demand and respondents are showing phenomenal reluctance in registering partition deed and attempting to swallow the "B" schedule property. The 2nd respondent is highly involved in fabricating the revenue records by way of third degree method in order to encroach the "B" schedule property.

It is stated that, the petitioner sent a legal notice on 14.12.2017 calling upon all the respondents to execute the registered partition deed in respect of "A" schedule property, the said notice was received by the respondents and they have not replied

any notice nor ready to comply the petitioner demand, but all the respondents now are busily involved in fabricating the revenue record and try to disturb the petitioner lawful possession over "B" schedule property. Hence this petition filed.

2. The averment in counter in brief:

All the allegation in the affidavit are all hereby specifically denied and the petitioner is put to strict proof of the same. The land measuring an extent of 0.19 cents in survey No.49/3 bearing plot No.59 was assigned to Mr.Rangaswamy Naicker, Son of Mr.Kristappan by the Special Deputy Thasildar Assignment, Chengalpattu, dated 07.08.1969, admeasuring

East x West : On the northern side 140 feet

East x West : On the southern side 140 feet

North x South : On the Eastern side 61 feet

North x South : On the Western side 60 feet

Ever since, the date of said assignment, the said assignee Mr.Rangaswamy Naicker, had been is and continues to be in exclusive possession and enjoyment of the said property. The said assignee Mr.Rangaswamy Naicker not only enjoyed the assigned property but, the adjoining property in Gland measuring an extent of 19.5 cents. It is established principle of law in respect of Gramma Natham that whoever is the first occupier of the land is the owner of the said land. Thus, the said Mr.Rangaswamy Naicker becomes the absolute owner of the said land. The said Mr.Rangaswamy Naicker put a house construction in the said property after obtaining due approval from the Thirukalukundram Town Panchayat. The said house construction put up by the said Mr.Rangaswamy Naicker, was assessed to property tax in his name and later the Electricity service connection for the said house was obtained in the name of Mrs.Anjalakshi, wife of Mr.Rangaswamy Naicker and the mother of the 1st respondent and grandmother of the respondents 2 and 3. The Gramma Natham survey sketch for S.No.691/2 will explicitly prove that only the house construction put up by the said Mr.Rangaswamy alone finds place in it will categorically prove

that case of the petitioner / plaintiff as utter false and the case of the respondents is absolutely true.

The gramanatham Chitta extract for Patta No.2556 stood registered in the name of Mrs.Anjalakshi wife of Mr.Rangaswamy, in respect of the said property and not in the joint names of Mrs.Anjalakshi and the petitioner as alleged in the plaint whereas, in the Adangal Extract Register for gramanatham S.No.691/2 for the said extent the petitioner in convenience with the revenue authorities have clandestinely added his name though, the petitioner had no iota of right, title or interest in it. The petitioner was never in joint possession and enjoyment of the said property at any point of time. Hence prayed for dismissal.

3. Considering the rival submissions the point for consideration is whether this application is allowed?

Heard both sides. Perused entire records. On careful perusal of records this suit is filed by petitioner/ plaintiff for the relief of permanent injunction not to disturb his peaceful possession over the suit B schedule property and for Mandatory injunction to direct the respondents/defendants to execute the register partition deed as per their oral partition.

On careful perusal of affidavit along with petition this application was filed for the relief of appointment of Advocate commissioner to demarcate the suit property and to note down the physical features thereon. On careful reading of affidavit filed by the petitioner herein there is no averments to narrate why he wants an Advocate commissioner to visit the suit property. The court cannot appoint a Advocate commissioner merely at the request of parties concern unless and untill the court comes to the conclusion that without a Advocate commissioner or local visit the issue involved in the suit would not be decided finally. Here as discussed above the suit is only for the relief of permanent injunction not to disturb along with Mandatory injunction, this court is of considered view that demarcation of suit property is not at all warranted and note down the physical features would clearly be a collection of evidence on the petitioner/plaintiff side.

It is well settled law that for a relief of permanent injunction the petitioner should prove his case based upon available possessive documents with him prior to institution of suit. Hence at this judicature this application is not maintainable and appointment of Advocate commissioner is not warranted in this case and thereby this petition is dismissed. No costs.

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

Typed by me corrected and pronounced by me in open court on this 20th day of November 2019.

Sd/-K.Yuvaraj, 20.11.2019

District Munsif-cum-Judicial Magistrate,
Thirukalukundram.

PETITIONER SIDE WITNESSES:-

- Nil -

PETITIONER SIDE DOCUMENTS:-

Ex.P1	--	The patta No.2556 stands in the name of the plaintiff and Anjalakshi
Ex.P2	14.12.2017	Legal notice to the respondents with postage receipt
Ex.P3	--	Acknowledgement card
Ex.P4	31.08.1967	Certified copy of Sale deed
Ex.P5	--	Plan issued by Thasildar, Thirukalukundram

RESPONDENT SIDE WITNESS:-

- NIL -

RESPONDENT SIDE DOCUMENTS:-

Ex.R1	07.09.1969	Assignment order passed in favour of Rangaswamy Naicker son of Krishtappan.
Ex.R2	08.03.1996	Copy of Settlement deed executed by Pattammal, wife of Ellappa Naicker infavour of Loganayaki, wife of Venu Naicker.

Ex.R3	10.08.2009	Certified copy of Settlement deed executed by Velu in favour of his daughter Thirupurasundari, wife of R.Ponnusamy.
Ex.R4	04.07.2011	Certified copy of Sale deed executed by A.Vinayagam and another infavour of J.Vasudevan
Ex.R5	26.04.2017	Certified copy of Settlement deed executed by Loganayaki, wife of Venu Naicker in favour of Tmt.Jayanthi, wife of Govindasamy.
Ex.R6	26.04.2017	Certified copy of Sale deed executed by Loganayaki infavour of Harihanth
Ex.R7	04.01.2018	Certified copy of Sale deed executed by N.Ravi infavour of K.Vijayakumar
Ex.R8	03.01.2007	Death certificate of Tmt.Anjalakshi
Ex.R9	23.08.2013	Death certificate of Mr.Rangasamy
Ex.R10	26.02.2014	Legal heirship certificate issued on the death of Tmt.Anjalakshi
Ex.R11	--	Petition submitted by the defendant to the Thasildar for the change of revenue records.

Sd/-K.Yuvaraj, 20.11.2019
DM-cum-JM
TKM

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THIRUKALUKUNDRAM

PRESENT: **Thiru. K. Yuvaraj, B.A.,B.L.,**
District Munsif-Cum-Judicial Magistrate,
Thirukalukundram.

Wednesday the 20th day of November 2019

I.A. No. 30/2018

in

O.S.No. 4/2018

...

Thanikachalam, aged 66 years, S/o.Manicka Naicker, Residing at No.54, Vellazhar street, Thirukalukundram and taluk, Kancheepuram District. ...Petitioner...

/Vs/

1. R.Velu, aged 67 years, S/o.Rangasamy Naicker, Residing at New Vellazhar street, Thirukalukundram and taluk, Kancheepuram District.
2. Murugesan, aged 35 years, S/o.Velu, Residing at New Vellazhar street, Thirukalukundram and taluk, Kancheepuram District.
3. Sundari, aged 38 years, W/o.Ponnusamy, residing at Bajanai koil street, Kariyacheri village, Thirukalukundram taluk, Kancheepuram District.

..Respondents ...

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The petitioner has filed this petition under Order 26 Rule 9 of CPC to order an appointment of an Advocate Commissioner to measure the suit "A" Schedule mentioned property with help of Taluk Surveyor and to note down the physical features in the suit property and submit his report with plan and pass such suitable orders.

DECREETAL ORDER

1. That the petition be and same is hereby dismissed.
2. That the both parties do bear their own costs.

SCHEDULE OF PROPERTY

"A" Schedule

Kancheepuram District, Thirukalukundram Taluk, Grama Natham House site in Old S.No.49/3, New S.No.691/2 measuring 0441 sq.mt (i.e) 10.81 cents.

"B" Schedule

Kancheepuram District, Thirukalukundram, Grama Natham Vacant House site in Old S.No.49/3, New S.No.691/2 measuring 220 sq.mt (i.e) 5-1/2 cents.

Bounded by,

North by New Vellazhar street,

South by Pattamal land,

West by Anjalakshi land,

East by Shanthi land in S.No.691/3

SCHEDULE OF COSTS

Petitioner's side costs

Stamp on Petition	Rs. 20. 00
Vakalath	Rs. 10.00

Total	Rs. 30.00

Respondents side costs

Vakalath	Rs. 10.00

Total	Rs. 10.00

(Both side costs memo not filed. Hence cost memo not taxed)

Given under my hand and the seal of this court on this 20th day of November 2019.

Sd/-K.Yuvaraj, 20.11.2019

District Munsif-cum-Judicial Magistrate,
Thirukalukundram.

