

**IN THE COURT OF SUBORDINATE JUDGE,
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,
Subordinate Judge,
Madurantakam**

Tuesday, this 2nd day of July 2024

I.A.No.1/2023

in

O.S.No.75/2019

(CNR.No.TNKPOB000586-2019)

Nandhakumar

... Petitioner/Plaintiff

..Vs..

Shanmugam

... Respondent/Defendant

This petition coming up for final hearing on 24.06.2024 in the presence of Thiru.E.Elango, counsel for the petitioner/plaintiff and Thiru.R.S.Renganathan, counsel for respondent/ defendant, after hearing the arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

ORDER

This petition is filed by the petitioners under Order XXVI Rule 9 of Civil Procedure Code to appoint an Advocate Commissioner to note down the physical features and to measure the schedule mentioned property with the help of Taluk Head Surveyor and file his report with plan.

2. Averments of the petitioner:

The petitioner is the absolute owner of the petition mentioned property and that he is in exclusive possession and enjoyment of the same. In recognition of his possession, Patta was granted in his name in patta No.768. The petitioner constructed a house in the same and also paid tax to the village panchayat. He also obtained electric service connection and paid the consumption charges. The respondent is no way connected to the suit property. As the respondent attempted to interfere with his peaceful possession, this suit was filed.

Respondent also field a suit in O.S.No.90/2018 as against the petitioner and his wife for declaration and recovery of possession. He alleged that the petitioner has put up compound wall in his property. The petitioner raised the compound wall in his property alone after measuring the petition mentioned property with the help of revenue officials. If an advocate commissioner was appointed to measure the suit property, then only truth will come out. Hence this petitioner file this application for appointment of advocate commissioner to note down the physical features and measure the petition mentioned property with the help of surveyor and file his report and plan into the court.

3. Averments of the Respondent:

The respondent denies the allegations set out in the affidavit. Property of respondent situated in S.No.19/14D. Petition mentioned property situated on the eastern side of S.No.19/14D. The petitioner and his wife illegally put up a compound wall on the eastern side of

S.No.19/14D which belongs to the respondent. So only the respondent filed the suit in O.S.No.90/2018.

As per in order I.A.No.438/2018 in O.S.No.90/2018 an advocate commissioner was appointed to measure the properties comprised in S.No.19/14D and S.No.19/4 with the help of Taluk Head Surveyor and that the learned commissioner also filed his report. The learned commissioner has clearly mentioned that the petitioner and his wife raised a compound wall on the North – East corner in S.No.19/14D which belongs to the respondent measuring 17.2 meters in North – South direction. So there is no need to appoint advocate commissioner again to measure the petition mentioned property. Hence the respondent prays for dismissal of the application.

4. Heard both sides and perused the records.

5. **Point :-**

“Whether an advocate commissioner can be appointed?”

Before delving into the merits of this application, this court wants to highlight that, as per the order the Hon’ble Principal District Court in T.R.O.P. 53/2018 dated 30.01.2019, the suit in which this application was filed has to be transferred from District Munsif Court, Madurantakam to this court and should be tried along with O.S.No.90/2018 and that both suits should be disposed off within **six** months. So this suit which was originally filed before the learned District Munsif Court, Madurantakam was transferred to this court to try along with the suit in O.S.No.90/2018. Keeping in mind this court proceed to pass orders in this application.

In nutshell the petitioner wants to prove that the compound wall raised by him situated in his property alone and that he didn't constructed a compound wall in the property belongs to the respondent. It is pertinent to note that an application in I.A.No.438/2018 was filed by the respondent in O.S.No.90/2018 for appointment of commissioner as such he has filed the suit for declaration and recovery of possession. On 13.01.2020 a commissioner was appointed by this court to inspect the properties. On that date the suit in O.S.No.75/2019 was transferred to this court and was tried jointly with in O.S.No.90/2018. So it is clear that on the date of appointment of commissioner in O.S.No.90/2018 both the suits were tried jointly. So, any order passed in any suit will have the impact on the other suit.

It is pertinent to note that the learned commissioner was appointed as per order in I.A.No.438/2018 in O.S.No.90/2018, who inspected the suit property along with the property mentioned herein and find out the encroachment. In commissioner report at para No.7, it is clearly stated by commissioner that, as per the request made by the learned counsel for the petitioner herein, he measured the property comprised in S.No.19/4. Here the petition mentioned property was comprised in S. No. 19/4. So, there is no doubt that the petition mentioned property was already measured by the learned commissioner and a report in respect of the same was filed into court. So it is unnecessary to again appoint an advocate commissioner to inspect the petition mentioned property. If the petitioner herein had any objections to the Commissioner report, then he may file objections to the report filed by the learned commissioner in I.A.No.438/2018 as such this suit was tried jointly with O.S.No.90/2018. Furthermore another commissioner cannot be appointed to revisit the property which was

already measured by a commissioner. On this short ground itself this application is not maintainable.

Next the petitioner herein wants to fetch evidence to show that he has constructed compound wall in his property alone. On keen perusal of affidavit filed by the petitioner it was admitted that before raising compound wall, the petitioner measured the property with the help of revenue officials and then only he put up compound wall in the property. But unfortunately for the reason best known to the petitioner, there is no objection raised by the petitioner.

There is no document filed by the petitioner to show that the petition mentioned property was already measured by the revenue officials. Furthermore as this property was measured by the revenue officials, it is unnecessary to again measure the same by an advocate commissioner. On perusal of affidavit there is no sufficient reason set out by the petitioner for appointment of advocate commissioner. Moreover the Hon'ble Principle District Judge, as directed this court to dispose of both the cases within 6 months from the date of order of transfer petition. In spite of the petitioner intelligent filing in this kind of petition protracted the proceedings. Hence this application is not maintainable in law or in facts.

6. Result:

In the result this application is dismissed as devoid of merits. No cost.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 2nd day of July 2024.

Subordinate Judge,
Madurantakam.

I. Petitioner side evidence and Exhibits : Nil.

II. Respondents side Evidence and Exhibits : Nil.

Subordinate Judge,
Madurantakam.