

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

PRESENT: Tmt. V.Devapriya, B.Sc.,M.L.,
District Munsif, Madurantakam

Tuesday, the 2nd day of April, 2024

I.A.No.6/2023

in

O.S.No. 16/2018

1. Pepsico India Holdings Pvt. Ltd.,
Represented by its General Manager
Productivity and Sustainability
T.K.J.Sridharan

2. Varun Beverage Limited,
Represented by its Assistant Vice President
of the company and authorized signatory
A.Elangovan

...Petitioners/Plaintiffs

-vs-

T.Philip

...Respondent/Defendant

This petition coming up before me on 13.03.2024 for final hearing in the presence of, Thiruvallargal. R.S.Renganathan and S.Vinoth counsels for the Petitioners/Plaintiffs and Thiru. P.S.George, counsel for the Respondent /Defendant and after hearing the arguments on both sides and upon perusing the materials placed on record, and having stood over for consideration till this day, this court delivers the following,

ORDER

This petition has been filed by the Petitioners/Plaintiffs under Order XXVI

Rule 9 read with Section 151 of the Code of Civil Procedure, to appoint an advocate commissioner to measure the suit 'A' and 'B' schedule properties as well as the property of the Respondent/Defendant in S.No.586/2A, with the help of Taluk Head Surveyor (Deputy Inspector of Survey) Madurantakam Taluk and to note down the physical features of suit 'A' and 'B' schedule properties and the physical features in the property of the Respondent/Defendant in Survey No.586/2A and to submit his report along with rough sketch.

2.The averments stated in the petition in brief

The suit property was originally belonged to 1st Petitioner/1st Plaintiff. Pending suit, the 2nd Petitioner/2nd Plaintiff had purchased the suit properties from the 1st Petitioner/1st Plaintiff under sale deed dated 02.05.2019. Since then, the 2nd Petitioner/2nd Plaintiff is carrying on business in the suit properties and it is in possession and enjoyment of the suit properties. Thus the 2nd Petitioner/2nd Plaintiff is entitled to contest the above suit along with 1st Petitioner/1st Plaintiff and he is entitled for the relief. After purchasing the suit property, the 2nd Petitioner/2nd Plaintiff was impleaded in the above suit as per the order in I.A.No.2/2020 dated 03.12.2020.

3. The 1st Petitioner/1st Plaintiff had purchased the suit properties from one

Thilagavathy and Venkatesan under sale deed dated 06.09.1996. Since then, the 1st Petitioner/1st Plaintiff was using the bore well in the suit properties for its business after obtaining the necessary approval. Before the institution of the above suit, the Respondent/Defendant had sent legal notice dated 15.05.2017 to the 1st Petitioner/1st Plaintiff, claiming that the suit bore well is in Survey No.586/2A of Mamandur village which is the property of Respondent/Defendant. The 1st Petitioner/1st Plaintiff had sent reply notice dated 05.06.2017 stating that the bore well is situated in Survey No.586/1, which is subdivided as 586/1A3B. The Respondent/Defendant had alleged that since the old wall in Survey No.586/1A3B was demolished, he had constructed a new wall in his property in survey No.586/2A.

4. The 1st Petitioner/1st Plaintiff had filed a petition for temporary injunction, in the above suit and the same was granted to him. On 06.02.2018, the staff and men of the 1st Petitioner/1st Plaintiff company went to the suit properties and found that the Respondent/Defendant had trespassed into the suit property and had demolished the wall with 20 persons and are filling sand in the bore well. Therefore the 1st Petitioner/1st Plaintiff company lodged a complaint before Padalam Police Station. Since there was no action, the 1st Petitioner/1st Plaintiff had filed the petition for

police aid and the same was allowed and the Inspector of Police Padalam was directed to give protection to the 1st Petitioner/1st Plaintiff company to draw the water from the bore well without hindrance till 09.02.2018.

5. The 1st Petitioner/1st Plaintiff and the Respondent/Defendant had agreed for compromise after measuring the suit properties. Thereafter the 1st Petitioner/1st Plaintiff had sold the suit properties to the 2nd Petitioner/2nd Plaintiff on 02.05.2019. The Respondent/Defendant had stated in his written statement that he had not encroached upon the suit properties. The dispute between the Respondent/Defendant and the 2nd Petitioner/2nd Plaintiff is only in respect of demarcation of properties. Therefore it is necessary to measure the suit property by appointing an advocate commissioner and the same will reduce documentary and oral evidence. Hence the petition.

6. The averments stated in the counter filed by the Respondent/Defendant in brief:

This petition is not maintainable in law and on facts. The Respondent/Defendant had not trespassed into the suit properties. The Petitioners/Plaintiffs used the interim injunction as a sword to trespass into the Respondent/Defendant property by demolishing the old wall. The said borewell is

not in use by the Petitioners/Plaintiffs, even before filing of the suit. This petition is filed to gather evidence. The above suit was filed in the year 2018 and it is posted for trial. At this stage the Petitioner/Plaintiff had filed this petition to drag on the proceeding and to collect evidence. The advocate commissioner cannot be appointed to collect evidence. The bore well was not disturbed in any manner by construction of the compound wall. Even before filing the suit, the suit property was already measured. The advocate commissioner cannot measure the Respondent/Defendant's property, since no relief has been claimed over the same. Hence there is no merits in this petition. Hence this petition is liable to be dismissed with costs.

7. The point for determination is whether this petition is to be allowed or not?

8. On the side of the Petitioners/Plaintiffs, Exhibits P-1 to P-8 were marked and on the side of Respondent/Defendant, no exhibits were marked and no witnesses were examined on both sides.

9. Heard both sides and perused the records.

10. The Petitioners/Plaintiffs had filed this petition for appointment of an advocate commissioner to measure the suit properties. The Respondent/Defendant had resisted the petition stating that the advocate commissioner cannot be appointed to

collect the evidence.

11. The Petitioners/Plaintiffs had stated that the Respondent/Defendant had constructed the compound wall in the suit properties and the Respondent/Defendant had denied the same. Perusal of records show that the Petitioner/Plaintiff had filed the above suit for mandatory injunction to remove the alleged wall constructed in the suit property by the Respondent/Defendant. Thus the dispute between the parties is with regard to the demarcation of properties. The Exhibit P-1 to P-3 show that the suit property belongs to 2nd Petitioner/2nd Plaintiff. The Exhibit P-8 shows that S.No.586/2A belongs to Respondent/Defendant. The Exhibit P-4 and P-6 show that the Respondent/Defendant is the adjacent land owner.

12. The learned counsel for the Petitioners/Plaintiffs had filed the judgement of the Hon'ble High Court of Madras in the case of *Shanmugathai Vs Kamalammal and another [2017 (2) CTC 353]*, wherein it was held that when the respective Defendant deny the title and location of disputed construction and specifically assert that the construction is within their property and there is no encroachment, the nature of dispute could be resolved only if the exact location of construction is brought to the knowledge of court, which cannot be done except by appointment of Advocate Commissioner. In the present case, the Respondent/Defendant had

specifically denied the encroachment alleged by the Petitioners/Plaintiffs. Therefore as per the above proposition laid down by the Hon'ble High court, this court is of the opinion that the appointment of the Advocate Commissioner is necessary to find out the exact location of the alleged construction in order to resolve the dispute between the parties. Hence for the foregoing reasons, this court is inclined to allow this petition.

13. In the result, this petition is allowed and Mr. D.Parthiban, Advocate [Enroll No. 301/2017], is appointed as Advocate Commissioner to measure the suit 'A' and 'B' schedule property and the property of the Respondent/Defendant in S.No.586/2A of Mamandur Village, with the help of Taluk Head Surveyor (Deputy Inspector of Survey), Madurantakam Taluk and to note down the physical features of suit 'A' and 'B' schedule property and the property of the Respondent/Defendant in Survey No.586/2A and to submit his report along with rough sketch, before this court. The remuneration for the Advocate Commissioner is fixed as Rs.7000/- to be paid by the 2nd Petitioner/2nd Plaintiff to the Advocate Commissioner. For report call on 04.06.2024.

Dictated to the Stenographer, transcribed and typed by him and corrected and

pronounced by me in open court on this the 2nd day of April, 2024

Sd/-V. Devapriya
02.04.2024
District Munsif
Madurantakam

Petitioners side witnesses :

Nil

Petitioners side documents

- Ex. P-1 - Certified copy of Sale Deed dated 06.09.1996 (Doc.No.2840/1996)
- Ex. P-2 - Certified copy of Sale Deed dated 06.09.1996 (Doc.No.2841/1996)
- Ex. P-3 - Certified copy of Sale Deed dated 02.05.2019
- Ex. P-4 - FMB of S.No.586/2A
- Ex. P-5 - FMB of S.No.586/1A3A
- Ex. P-6 - FMB of S.No.586/1A3B
- Ex. P-7 - Online patta No.2610
- Ex. P-8 - Online patta No.2320

Respondent side witnesses and documents:

Nil

Sd/-V. Devapriya
02.04.2024
District Munsif
Madurantakam