

IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM

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

Friday, the 2nd day of June, 2023

**I.A.No. 6/2023
in
O.S. No. 101/2020**

Subramani

...Petitioner/Defendant

-VS-

Kali

... Respondent/Plaintiff

This petition coming up before me on 12.04.2023 for final hearing in the presence of, Thiru.S.Rajkamal, Counsel for the Petitioner/Defendant and Thiruvargal.A.Rajan Gandhi, B.Manavalan and D.Parthiban, Counsels for the Respondent/Plaintiff and after hearing the arguments of 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 Petitioner/Defendant under Order XXVI Rule 9 of Code of Civil Procedure, to appoint an Advocate Commissioner to note down the physical features of the suit properties and to measure the same with help of Taluk Head Surveyor and to submit his report with plan.

2. The Averments stated in the petition in brief:

The Respondent/Plaintiff had filed the above suit against the Petitioner/Defendant

with false allegations. The Petitioner/Defendants has not made any encroachment in the suit 'B' schedule property. The Respondent/Plaintiff had filed an application to measure the suit property and the same was allowed and the Advocate Commissioner after issuing notice to both the parties, had inspected the suit property on 23.07.2021. Since the Head Surveyor was not available, the suit property was measured by Firka Surveyor. When the suit property was measured from the stone on the western side of the Petitioner's property there is no encroachment in the suit 'B' schedule property. When the Respondent/Plaintiff and his counsel had objected the same the Surveyor had sought for another survey stone in the suit property. Since there is no stone in the suit property, the firka surveyor had measured the suit property from the survey stone located in the other properties, which is pointed as point 'B'.

3. When the suit property is measured to point 'D', it is shown that there is encroachment by the Petitioner/Defendant in the common pathway. The said stone was in a standing position and the Petitioner/Defendant had requested to verify G line of the said survey stone 'C'. But the Firka surveyor had not accepted the same. The suit 'B' schedule property is 200 feet length but the Advocate Commissioner had measured the suit 'B' schedule property only till the Petitioner/Defendant's house and had mentioned it as 100 feet in his report. But the suit property common pathway goes beyond the Petitioner/Defendant's house on the eastern side. There is different between the

surveyor report and the Advocate commissioner report. Therefore it is necessary to re-measure the suit property which District Surveyor. Hence this petition.

4. The Averments stated in the Counte filed by Respondent/Plaintiff in brief:

This petition is not maintainable in law and facts. The Respondent/Plaintiff had filed the above suit against the Petitioner/Defendant alleging that, he had obstructed the way to the Respondent/Plaintiff's property by constructing house and had prayed for Mandatory injunction to remove the illegal construction. While measuring the suit 'B' schedule property, the Petitioner/Defendant and his counsel were present and they had not made any objection. Therefore this petition is not maintainable. The Petitioner/Defendant had made encroachment in the suit 'B' schedule property to an extent of ½ feet and it was shown by the Advocate Commissioner. Therefore in order to prevent the Respondent/Plaintiff from getting the decree, the Petitioner/Defendant had filed this petition. There is no any fault in the survey stone in the measurement and if any problem arise with regard to the one survey stone, the measurement will be done from the other survey stones. Hence the petition is liable to be dismissed with costs.

5. The point for determination is whether this petition is to be allowed or not ?
6. No Exhibits marked and no witnesses were examined on both sides
7. Heard both sides and perused the materials placed on record.
8. The Petitioner/Defendant had filed this petition to appoint Advocate Commissioner to

re-measure the suit property with the help of District Head Surveyor, on the ground that the suit property was measured by Firka Surveyor from the wrong survey stones. The Respondent/Plaintiff resisted the petition stating that, there is no fault in the survey stone.

9. Perusal of the records reveals that the Advocate Commissioner has been appointed to measure the suit 'B' schedule property alone. The Petitioner/Defendant had stated that, while measuring the suit property from the point 'C', that is on the western side of the Petitioner/Defendant's property, there is no encroachment in the suit 'B' schedule property. In the warrant issued to the Advocate Commissioner it was mentioned that, the length of the suit 'B' schedule property is 200 feet. But in the report of the Advocate Commissioner, he had mentioned that, the length of the suit 'B' schedule property is 95 feet. The measurement of the breadth of the suit 'B' schedule property also differs in the report of the Advocate commissioner.

10. The Advocate Commissioner had mentioned in the report that, he had measured the suit 'B' schedule property from the point 'D'. But the Advocate Commissioner had not stated any fact with regard to the survey stones in the point 'C', as alleged by the Petitioner/Defendant. The Petitioner/Defendant had filed objection for the report of the Advocate Commissioner stating that, the Advocate commissioner had not measured the suit property from the survey stone near the suit property and had measured the suit

property from the survey stone situated in the other survey number. The Advocate Commissioner had mentioned in his report that, there is no survey stone in the suit property.

11. The Petitioner/Defendant had stated that, while measuring the suit 'B' schedule property from the point 'C' it was found that there is no encroachment. But the Advocate commissioner had measured the suit property from point 'D' and had stated that, there is encroachment by the Petitioner/Defendant in the common pathway, that is suit 'B' schedule property. The Advocate Commissioner in his report has stated that, the Respondent/Plaintiff had planted one Coconut tree and one Neem tree in the suit 'B' schedule property and warrant has been issued to measure the suit 'B' schedule property alone. The learned Advocate commissioner had measured the suit 'A' schedule property and had stated that there is encroachment in the suit 'A' schedule property. Therefore this court is of the opinion that in order to resolve the real issue in the suit, it is necessary to clearly find out with regard to the encroachment. Hence for the fore going reasons, this court is inclined to allow this petition.

12. In the result, this petition is allowed. Mr. V.Mohanraj, Advocate is appointed as Advocate Commissioner to re-measure the suit properties with the help of District Head Surveyor and to file his report with plan on 23.06.2023. The remuneration for Advocate Commissioner is fixed as Rs.7,000/- to be paid by the Petitioner/Defendant. For report call on 23.06.2023.

Dictated to the Stenographer and transcribed by her and corrected and pronounced by me in open court on this the 2nd day of June, 2023

District Munsif
Madurantakam

Petitioner side witnesses and documents:

Nil

Respondent side witnesses and documents:

Nil

District Munsif
Madurantakam

