

**IN THE COURT OF THE DISTRICT MUNSIF AT MADURANTAKAM**

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

Monday, the 5<sup>th</sup> day of February, 2024

I.A.No.6/2023

in

O.S.No. 185/2018

1. Karpagam

2. Paramasivam

...Petitioners/Defendants

**-vs-**

Rani

...Respondent/Plaintiff

This petition coming up before me on 24.01.2024 for final hearing in the presence of, Thiruvalargal. P.N. Krishnan and G.R.Anbu, counsels for the Petitioners/Defendants and Thiru. V. Agoram, counsel for the Respondent/Plaintiff 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/Defendants under Order XVI Rule 1 and 5 and Section 151 of Code of Civil Procedure, to issue witness summons to the petition mentioned witness.

**2.The averments stated in the petition in brief**

The Respondent/Plaintiff had filed the above suit for mandatory injunction

and for permanent injunction against the Petitioners/Defendants and the Petitioners/Defendants had filed the written statement in the above suit denying the allegations made by the Respondent/Plaintiff.

3. The Advocate Commissioner appointed in the above suit in I.A No. 2302 of 2018 had inspected the suit property on 19.10.2019 and instead of measuring the suit S.No. 252/3C based on the old FMB, the Advocate Commissioner had measured the same based on the new FMB given by the Taluk Deputy Surveyor. Without verifying the correct survey stone, the Advocate Commissioner had measured the property based on their possession, from south to north in only one direction and had started measuring the properties from south east portion of the new T.S.No. 53/2, towards the north till the north east portion of new T.S.No. 42, old S.No. 253/2C and had given a report stating that the Petitioners/Defendants had encroached a portion in the suit properties to the measurement of 0.04m north-south on the eastern side, 0.01m north south on the western side and the east-west 6.4 m, by constructing the cement pillars.

4. Similarly, the Taluk Deputy Surveyor had also given a wrong FMB to the Advocate Commissioner and the said documents are marked as Exhibits C-1 to C-3, through Advocate Commissioner. The Petitioners/Defendants had filed the objections for the report of the Advocate Commissioner. The FMB for the old

S.No. 252, was marked as Exhibit B-3 on the side of the Petitioners/Defendants, while examining the Advocate Commissioner. While comparing the Exhibit C-3 and Exhibit B-3, in Exhibit B-3 the eastern side measurement of S.No. 253/3D is given as 8.2m only. But in the Exhibit C-3, the eastern side measurement of S.No. 253/3D, for which new T.S.No. 52 was allotted, is given as 8.6m. Since without finding the proper survey stone, the Advocate Commissioner measured the properties from south to north, the eastern side North-South measurement of S.No. 252/3D was increased to an extent of 0.04m, and there was variance in the measurement of suit S.No. 252/3C, T.S.No. 42, to an extent of 0.04m while measuring the properties from South to North.

5. Therefore the Advocate Commissioner had wrongly filed the report stating that the construction, which was made in the T.S. No. 39/2, is found in the suit property to an extent of 0.04m. If the Advocate Commissioner had identified the S.No. 252/3C by finding the correct survey stone on the four direction, based on the FMB of S.No. 252, which was mentioned in the warrant and the plaint, it would have come to know that the Petitioners/Defendants had not made construction in the suit property and that they had made construction only in T.S. No. 39/2.

6. The Properties in S.No. 252/3B and 252/3A belongs to one Deivanai, Mother-in-law of the 2<sup>nd</sup> Petitioner/2<sup>nd</sup> Defendant. As per Exhibit B-3, the southern side

measurement of the S.No. 252/3B is 9.2m. The said properties was said divided as T.S. No. 39/1 and 39/2, during Town Survey and the revenue records for T.S No. 39/2, is in favour of 1<sup>st</sup> Petitioner/1<sup>st</sup> Defendant and for T.S.No. 39/2 , the revenue records are in favour of said Deivanai. As per the Exhibit C-3, the North-South eastern side measurement of S.No. 39/1 and 39/2 is 4.4m+4.6m, totally 9m. Further, the measurement of old S.No. 252/3A was not added in new T.S. No. 39/1. In that there are variance in the measurements mentioned in the Exhibit C-3 and Exhibit B-3. If the Advocate Commissioner had measured the S.No. 252 from north to south by finding the survey stone on the northern side and had fixed the 4 boundaries of the S.No. 252/3C, it would have come to know that the Petitioners/Defendants had not raised the cement pillars in the suit properties.

7. After the Petitioners/Defendants had cross examined the Respondent/Plaintiff, the Respondent/Plaintiff had amended the plaint by including the new T.S.No. 42 in the schedule of property. Therefore at the time of measuring the property by the Advocate Commissioner, the new T.S.No. 42 was not given in the plaint and only S.No. 252/3C was given. Therefore based on the new FMB which was prepared during town survey, the Advocate Commissioner had given the wrong report stating that the Petitioners/Defendants had encroached the suit property to an extent of 0.04m.

8. Therefore in order to prove the same, and in order to explain the difference between the Exhibit B-3 and C-3, the certified copy of FMB for S.No. 252 and FMB of T.S.No. 53/2, 53/1, 52, 42, 39/2, 39/1, 37 and 38 of Block 51, Ward-A of Maduranthakam Town is necessary and further the evidence of the Taluk Deputy Surveyor is necessary to explain the difference between the two FMBS. Hence the petition.

**9. The averments stated in the counter filed by the Respondent/Plaintiff in, brief:**

This petition is not maintainable in law and on facts. The new Town survey number of the suit survey number 252/3, is T.S.No. 42. The Advocate Commissioner and the Surveyor had measured the suit property based on the old FMB Sketch and also new Town survey FMB Sketch. The Advocate Commissioner and the Surveyor report, clearly states that the Petitioners /Defendants had encroached 0.4 meters in the suit property, belonged to this Respondent/Plaintiff. Now the Petitioners/Defendants filed the present application to produce the survey No. 53,52,42,39,37 FMB Sketch and Adangal extract and those are not related to the suit property and not relevant to the suit.

10. The measurements on the four side of old S.No. 252 and new T.S.No. 42, had not changed. Hence, this petition is not maintainable in law. All the allegations set

out in the affidavit are all correct. This petition is filed to drag the proceeding, without any pleadings in the written statement. The Petitioners/Defendants had never given petition before Tahsildhar, to produce the document and hence this petition is not maintainable in law. The provision mentioned in the petition is incorrect. There is no merits in the present petition. Hence, this petition is liable to be dismissed with cost.

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

**12.** No Exhibits marked and no witnesses were examined on both sides

**13.** Heard both sides and perused the records.

**14.** The Petitioners/Defendants had filed this petition to issue summon to the Taluk Deputy Surveyor, Madurantakam to produce the certified copy of Field Measurement Book and to give evidence. The Respondent/Plaintiff resisted the petition stating that since the measurements of the suit property are same in both FMBs, this petition is not maintainable.

**15.** The Petitioners/Defendants stated that instead of measuring the suit properties based on the old FMB for the S.No. 252/3C, the Advocate Commissioner had measured the suit properties based on the new FMB for the New T.S. No. 42, that has been allotted to S.No.253/3C and had filed a wrong report stating that there is an encroachment in the suit property.

**16.** According to the Petitioners/Defendants, the measurements in the new FMB was wrongly mentioned and that it is not in accordance with the measurements in the old FMB. The learned Advocate Commissioner had filed the new FMB, along with his report and the same has been marked as Exhibit C-3. The old FMB was marked as Exhibit B-3, through the learned Advocate Commissioner. The perusal of the Exhibit C-3 and Exhibit B-3, shows that there are differences in the measurements of the properties in both FMB.

**17.** The Petitioners/Defendants further allege that the property in S.No. 253/3D (New T.S.No.52), has been given excess land than the measurements mentioned in the old FMB and that since the learned Advocate Commissioner had measured the properties from the South direction alone, he had given a wrong report with regard to the encroachment. On comparison of the Exhibit C-3 and Exhibit B-3, it is prima facie found that there is difference in measurement in S.No.253/3D in Exhibit B-3 and T.S.No. 52, in Exhibit C-3.

**18.** The Exhibit C-3 and Exhibit B-3 are revenue records and therefore, the revenue authorities alone is the competent person to give evidence with regard to their documents and the correlation of the survey numbers. Hence, for the foregoing reasons, this court is inclined to allow this petition.

**19.** In the result, this petition is allowed. No costs.

Partly dictated to the stenographer, transcribed and typed by him and partly typed by me in my laptop, corrected and pronounced by me in open court on this the 5<sup>th</sup> day of February, 2024.

Sd/-V. Devapriya  
05.02.2024  
District Munsif  
Madurantakam

**Petitioners side witnesses and documents:**

**Nil**

**Respondent side witnesses and documents:**

**Nil**

Sd/-V. Devapriya  
05.02.2024  
District Munsif  
Madurantakam