

IN THE COURT OF THE PRINCIPAL SUB JUDGE, PALANI

**Present : Tmt.K.Renugadevi, LL.M.,
Principal Sub Judge, Palani.**

Dated this the 07th day of January 2025, Tuesday

I.A.No.2/2023

in

O.S.No.251/2023

Rajammal

... Petitioner/Plaintiff

/Vs/

Saroja

... Respondent/ Defendant

This petition came up before me on 12.11.2024 in the presence of Mr.K.Viswabharathy, Mr.S.Noornavas, Mr.P.Jeevanantham and Mr.S.Noornajik, learned Counsels for the Petitioner/Plaintiff, and the respondent remained exparte and upon hearing the petitioner side enquiry and upon perusal of records and having stood over for consideration till this date, this court doth delivers the following

ORDER

This petition is filed by the Petitioners/Plaintiffs under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate Commissioner to inspect the physical features of the petition schedule property with the help of Village Administrative Officer and Surveyor and to file report.

2. The petitioner is the plaintiff in the suit has filed this application to appoint an Advocate Commissioner on the allegation that the schedule property belonged to the mother of the plaintiff through sale deed dated 21.08.1965 and thereafter she has been in possession of the suit schedule property and she alleged to have executed a Will in

favour of the plaintiff on 11.10.1923 and her mother died on 19.12.1996 and thereafter the said Will came into force and thereafter the plaintiff has been in possession of the schedule property after paying kist and after obtaining Electricity Service connection in his name and there was a East – West 30 feet length and 6 feet width common pathway on the northern side of the plaintiff schedule property which has been used by the mother of the plaintiff and thereafter the plaintiff, defendant and other general public. But the respondent/defendant was attempting to obstruct the common pathway and atlast he has raised a wall with measurement of East – West 30 feet length, 1 feet width and 6 feet height in the said common pathway. And therefore to find out the said encroachment appointment of commissioner is necessary and so sought to allow the application.

3. Respondent remained exparte.

4. Point for determination in this application is whether the appointment of commissioner is necessary for the disposal of the case ?

5. According to the case of the petitioner/plaintiff the schedule property situated in S.No.53/1A belonged to the mother of the plaintiff through sale deed dated 21.08.1965 and she alleged to have executed a Will in favour of the plaintiff and after death of his mother the schedule property is in enjoyment of the plaintiff as per Will and there is a common pathway on the northern side of the suit schedule property having East – West 30 feet length and 6 feet width and in the said common pathway

the respondent/defendant alleged to have encroached by raising a wall having East – West 30 feet length, 1 feet width and 6 feet height and to ascertain this fact he seeks for the appointment of Commissioner.

6. It is the duty of the plaintiff to substantiate his right in S.No. 53/1A and shall also elucidate before this court that there is a common pathway on the northern side of the suit schedule property situated in S.No.53/1A having East – West 30 feet and 6 feet width pathway. Before proving this fact by producing oral and documentary evidence the appointment of commissioner would amount to collection of evidence which is not permissible under law. Moreover if the plaintiff has elucidated that there is a common pathway on the northern side as alleged by him with the given measurement the court can proceed for appointment of Commissioner and if commissioner is appointed as of now without any proof of title of petitioner/plaintiff in the suit schedule property and the proof regarding the availability of common pathway on the northern side of the suit schedule property would amount to collection of evidence and therefore this petition is kept in abeyance until further orders for enabling the petitioner/plaintiff to lead evidence in the main suit regarding his right and the proof of common pathway on the northern side.

Dictated to the the steno-typist, transcribed and computerized and printed by her and pronounced by me in the open court on this the 07th day of January 2025.

**sd./K.Renugadevi,
Principal Sub Judge,
Palani.**

Both side witnesses and documents: NIL

**sd./K.Renugadevi,
Principal Sub Judge,
Palani.**

Principal Sub Court,
Palani.

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Fair/Draft Order

Date : 07.01.2025

