

IN THE COURT OF THE PRINCIPAL SUB JUDGE, PALANI

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

Dated this the 10th day of January 2025, Friday

I.A.No.2/2023

in

O.S.No.197/2023

Thiyagarajan

... Petitioner/Plaintiff

/Vs/

1. Senthilmari

2. Panjavarnam

... Respondents/Defendants

This petition came up before me for final hearing on 16.10.2024 in the presence of Mr.V.Rajamanickam, Mr.V.Patchaimuthu, Mrs.R.Abirami, Mr.M.Niyajahamed and Mr.G.Kannusamy, learned Counsels for the Petitioner/Plaintiff, Mr.S.Bagavathyraj, Mr.K.Sivaraman and Mr.G.Vijayavel, learned Counsels for the Respondents/defendants and upon hearing both side enquiries and on 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 Petitioner/Plaintiff under Order 26 Rule 9 and Section 151 of Civil Procedure Code 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.

1. The petitioner is the plaintiff in the suit has filed this application to appoint an Advocate Commissioner to inspect and measure the suit schedule property to find out the encroachment made by the respondents/defendants as shown in the rough sketch of the plaintiff, on the allegation that the father of plaintiff namely Muthukumar alleged to have purchased the 2nd item of the schedule property on 16.04.1996 and the plaintiff has purchased the 1st item of schedule property which is situated on the eastern side of the 2nd item of the schedule property and they have been in enjoyment of the same. The father of 1st respondent has purchased the property that situates on the northern side of the schedule properties in which there was a old house and thereafter a new house was constructed after encroaching the 2nd item of schedule property to an extent of 2 feet width, and East-West 20 feet length and the father of the 1st respondent promised to remove the encroachment when it was objected by the plaintiff and after the death of father of 1st respondent/defendant, the respondent herein refused to remove the encroachment as promised by father of 1st respondent and the husband of 2nd respondent and they have also encroached the front portion of the house situated in the schedule property of the petitioners/plaintiffs and so inorder to find out the encroachment made by the respondents/defendants it is necessary to appoint the Commissioner to inspect and measure the suit schedule proeprty so as to note down the encroachment as alleged by the petitioners in their rough sketch for the disposal of the case.

3. Whereas the respondents filed counter stating that the right of the plaintiff in the suit schedule property has to be strictly proved by him and the plaintiff is in the enjoyment of the property more than an extent purchased by him and his father through sale deeds and therefore after the properties are measured as per the sale deed of the plaintiff and his father the real fact would come into light as the petitioner/plaintiff has obtained patta for more extent than the extent found in their sale deeds and further alleged that as 2nd item of the property belonged to the father of the plaintiff and he alleged to be died, the legal heirs of the father of plaintiff namely Muthukumar need to be impleaded as party, and seeking the relief of declaration in favour of the petitioner/plaintiff without impleading other legal heirs of Muthukumar will affect the right of the other co-owners and so sought to dismiss this petition.

4. Heard. Records perused.

5. On perusal it is seen that the plaintiff has filed a suit for declaration and recovery of possession and also for permanent injunction on the allegation that the schedule property belonged to him and the respondents have encroached the property as measured and shown in the rough sketch of the plaintiff and so sought to allow this application to note down the encroachment made by the respondents/defendants.

6. The learned Counsel for the respondent stated his no objection to appoint an Advocate Commissioner but sought to measure the property on the basis of the sale deed obtained by the plaintiff's father so that true fact would come into light and it is

also alleged in the counter that the plaintiff is in possession of the property more than the extent given in his sale deed. And therefore this court deemed to fit to measure the property of the plaintiffs and defendants as per the sale deed with the help of the Surveyor and note down whether any encroachment has been made by the respondents/defendants as alleged by the petitioner and the Commissioner shall prepare a plan drawn to scale and highlight the encroached portion if any. And the Commissioner shall also go through the sale deeds of both petitioner/plaintiff and respondents/defendants and measure the property as per the said sale deeds and also as per the revenue document with two different plans measured as per title deed and revenue document. Advocate Mr. Manivannan is appointed as an Advocate Commissioner and his remuneration is fixed as Rs.10,000/- payable by the petitioner/plaintiff. Send a letter to the Tahsildar to depute Town Surveyor to assist the Commissioner for the inspection of the property on the dates stipulated by the Advocate Commissioner. Advocate Commissioner shall report before this court each hearing as to the progress of the Commission and file a report and plan at an early date.

In the result, the petition is allowed. Advocate Mr. Manivannan is appointed as an Advocate Commissioner and his remuneration is fixed as Rs.10,000/- payable by the petitioner/plaintiff. Send a letter to the Tahsildar to depute Town Surveyor to assist the Commissioner for the inspection of the property on the dates stipulated by the Advocate Commissioner. Advocate Commissioner shall report before this court

each hearing as to the progress of the Commission and file a report and plan at an early date.

Dicated to the Steno-Typist, transcribed and computerised by her, corrected and pronounced by me in the open Court, on this the 10th 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.
I.A.No.2/2023
in
O.S.No.197/2023
Fair/Draft Order
10.01.2025.**

