

**IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
NATHAM**

Present: Tmt. V. Udhayasuriya, M.L.,
District Munsif cum Judicial Magistrate,
Natham.

Dated this Wednesday, 19th day of July 2023

I.A. No.193 of 2022 in O.S. No. 24 of 2022

1. M. Pazhaniyammal (died)
2. N. Subbulakshmi
3. M. Shanmugam
4. K. Nagalakshmi
5. M. Pazhanikumar
6. Dhanalakshmi
7. Mohanavalli
8. Mahalakshmi
9. Gokila

...Petitioners/Plaintiffs

/Vs/

1. P. Krishnan
2. C. Infant Livingston

...Respondents/Defendants

This petition is filed on 04.08.2022 and coming before me for final disposal on 11.07.2023 in the presence of Thiru.S.S. Ramasubramaniam, the learned counsel appearing for the petitioners/Plaintiffs and Thiru. C. Sudarvannan, the learned counsel appearing for the respondents/defendants and having heard the both side argument and upon perusing the documents, this court doth hereby pronounce the following:

ORDER

This petition is filed under order XXVI rule 9 and section 151 of Cpc to appoint an advocate commissioner to note down the physical features of the petition mentioned property and to measure the property with the help of the surveyor.

Brief averments of the Amended Petition: (Amended as per order in I.A. NO. 31 of 2023 dated 10.04.2023)

1. The petitioners stated that her husband Manickam and the 1st respondents are brothers. The petition mentioned property was originally purchased by their father in the year 07.009.1960. To reach the said property, they used the cart track situated in the eastern side of the property from

Senthurai, Kakkan colony to Mettupatti Grave yard. Except the said cart track there is no pathway to reach the petition mention property. Subsequently after the death of the Said Pazhani the properties situated in S.F. No.449/3 was partitioned between the respondents on 02.07.1985 vide an unregistered partition deed and they enjoyed the same till date. In the said partition deed there is an article with respect to the usage of the common cart track. In the mean time, husband of the Petitioner, Manickam died on 12.02.2011. Till the death of Manickam, the 1st respondent has not raised any objection with respect to the usage of the common pathway as per the partition deed. To the said Manickam, the petitioners 1to 9 are the only legal heirs.

2. The petitioners further stated that to reach the properties in S.F. NO. 449/3A and 3D the petitioners used the pathway to an extent of 3 meters in the north-south direction and 42.8 meters in the east-west direction situated in S.F. NO.449/3C which belongs to the 1st respondent. Except this pathway there is no other pathway exist to reach the petition mentioned 1st and 3rd item properties. In this situation, the 1st respondent by conceal the right of pathway exist in the petition mentioned 2nd and 4th item properties sold the properties to the 2nd respondent. The 2nd respondent now fencing the property and curtail the right of pathway to this petitioners and disturb the enjoyment of pathway by the petitioners. Hence, the petitioners filed this petition to note down the physical features of the petition mentioned properties and to measure the property with the help of the qualified surveyor.

Brief averments of the Counter statement filed by the respondents 1 and 2:

3) The respondents 1 and 2 were denied that the petitioners have no pathway right in the petition mentioned 2nd and 4th item properties. In the partition deed there is nothing was stated that the Manickam had pathway in the 1st respondent's property to reach his share. Further, there are pathway in all the directions except in the western side. They further stated that the petitioners or Manickam has not used the petition mentioned 2nd and 4th item properties as pathway at any point of time to reach the petition mentioned 1st and 3rd item properties. Further, the petitioners has not cultivated in the petition mentioned properties and it is not true that they used the 3rd and 4th item properties as pathway. The respondents further stated that there is an alternate pathway exist in S. no. 450 and in the southern side of the 1st item property to reach the petition mentioned properties. Hence, it is not necessary to entertain this petition and prays to dismiss the petition with cost.

The point for determination is whether the petition is liable to be allowed?

6) Both side enquiry heard. On the perusal of the petition, affidavit it was stated that, except the petition mentioned property, the petitioner has no other pathway to reach their lands situated in S.F. No. 449/3D and in S.F. No. 449/3A. The pathway in S.F. no. 449/3C2 and 449/3C1 is the only way to reach their properties. But, the respondents denied that there is no pathway as stated by the petitioners and there is an alternate pathway to the petitioners to reach their lands. To resolve the issue, it is necessary to note down the physical features of the petition mentioned property and to measure the property with the help of the qualified surveyor. To that appointment of advocate commissioner is must and measure the petition mentioned property with the help of Taluk surveyor will help to prove the existence of pathway or not. On consider the facts of the case, this court thinks fit, that it is necessary to note down the physical features of the petition mentioned properties by appointing advocate commissioner and to ad measure the properties with the help of Taluk surveyor. Hence, this court comes to the conclusion that the petition deserves merits and liable to allowed.

7) In the result, the petition is allowed and advocate Mrs. Durgadevi. B.A.,B.L., is appointed as an advocate commissioner and she is directed to visit and note down the physical features of the petition mentioned property also to note down the existence of alternate pathway if any to reach the petition mentioned properties after giving due notice to both parties. Further, she is directed to ad measure the petition mentioned properties with the help of the Taluk surveyor and directed to submit a report and plan along with photographs to this court within a period of 4 weeks. The advocate commissioner's remuneration is fixed as Rs.6,000/- and the same has been paid to her by the petitioner. Report and plan by 22.08.2023. No cost.

This order typed by me in my laptop and corrected and pronounced by me this 19th day of July 2023.

District Munsif-cum-Judicial Magistrate,
Natham.

Both Side oral and documentary evidence

: NIL

District Munsif-cum-Judicial Magistrate,
Natham.