

IN THE COURT OF SUBORDINATE JUDGE AT UTHANGARAI

Present: Thiru.P. Thirugnanasambandam, B.A, B.L.,

Subordinate Judge, Uthangarai.

Thursday on 19th day of June 2025

IA.No. 05 of 2021

in

OS.No. 78 of 2021

1. A.Viswanathan

2. V.Arulsevi

. ...Petitioner//Plaintiff

/Vs /

1. Venkatataragavan (Died)

2. Rani

3. C.Jegan

4. Pushpa

5. Deepalakshmi

6. Minor. Kishore

7. Minor. Eniyavan

.... Respondents/Defendants

This Petition came before me for hearing in the presence of Thiru.S. Sasikumar, Advocate for petitioner and Thiru.M.Jayabalan, Advocate for R4 to R7 and R2, R3 are set exparte, upon hearing the both side and having stood over for consideration till this day, this court delivered the following.

ORDER

The petitioner/ plaintiff filed this petition under order 26 Rule 9 and Section 151 of CPC.

1. The brief averments of the petition as follows:

The 2nd Plaintiff is 1st petitioner's wife. The 3rd Defendant is the son of the 2nd Defendant. The entire suit properties are originally belonged to the petitioners as per the sale deed dated:16.02.2000. Since then the petitioners had been in exclusive possession and enjoyment into the same. The petitioners have Gifted the suit "B" Schedule property to the 2nd Plaintiff as per the Gift Settlement deed dated:13.03.2014 and

handed over the possession of the same to the 2nd Plaintiff by retaining the suit "A" Schedule property for 1st petitioner's own, the 2nd Plaintiff also accepted the said Gift and since then she has been in exclusive possession and enjoyment into the same, Separate Patta was also issued in the name of the 2nd Plaintiff in Patta No: 1227. She also paying kist to the same to the Government Promptly till the date. The petitioners are the exclusive owner of the suit "A" Schedule properties and the 1st petitioner has been in exclusive possession and enjoyment into the same. The Patta also issued in petitioner's name in respect of the suit "A" Schedule properties, The petitioners have paying Kist to the same to the Government promptly, The 2nd Plaintiff is the exclusive owner of the suit "B" Schedule Property. The first Defendant owned some property in Survey No: 631 which is situated on the extreme eastern side on the suit "A" Schedule properties and the second defendant owned some properties in survey Nos: 623 and 624 which are situated on the extreme Northern Side on the Survey Nos: 622/1A and 622/1B, But the Defendants have no manner of any right or title or possession into any portion of the suit properties, But the Defendants Joined together by intending to get unlawful gain, the first Defendant laid false claim into some portion of the Suit "A" Schedule properties which is situated on the extreme eastern portions of the suit Survey Nos: 622/1B and 622/2 by denying petitioner's exclusive title into the same. The said Disputed portion in suit "A" Schedule properties is described hereunder in "C" Schedule, Accordingly the first Defendant filed Suit in OS. No.17/2020, on the file of the court of the District Munsif of Pochampalli against the petitioner's with false and imaginary allegations. The said suit is still pending. The Defendants 2 and 3 laid false claim into some portion of the suit "A" and "B" Schedule Properties which are situated on the extreme Northern Portions of the Suit Survey Nos: 644/1A and 644/1B by denying petitioner's exclusive title into the same, the said disputed portion in Suit "A" Schedule properties is described hereunder in "D" Schedule and the disputed portion in suit "B" Schedule property is described hereunder in "E" Schedule. The Rough sketch is herewith enclosed, As a matter of fact:20.03.2021, the Defendants Joined together by denying our title into the suit "C" "D" and "E" Schedule properties and the first

defendant attempted to encroach and trespass into the Suit "C" Schedule property and the Defendants 2 and 3 attempted to encroach and trespass into the suit "D" and "E" Schedule Properties. Hence it has become necessary for to appointment of Commissioner to measure and fix the boundaries of the suit properties to avoid multiplicities of litigation. Hence, this petition filed.

2. The brief averments of counter as follows:

The S.No. 631 is situated in the eastern side of the suit property and the said property originally belongs to 4th defendant through partition dated: 02.11.2006 and the same gifted to the 1st defendant on 30.11.2017 through settlement deed and on the same day the possession handed over. The 1st defendant enjoy the suit property till his death dated: 08.05.2023. After the death of 1st defendant, the 4 to 7 defendants are enjoy the said property as legal heirs of the 1st defendant. This S.Nos. 623, 624/1 are belongs to 2nd defendant through sale deed dated: 13.03.1981 and enjoy the property till date. The 3rd defendant assist to 2nd defendant for agriculture's work. Further, a canal has across in the S.Nos. 623, 624, 631, 632. The owners of the properties are irrigating the water from the said canal for the past 100 years and above. The plaintiffs intention to graph the land and damaged the varappu (indentation) in the S.No. 631. The 1st defendant filed a suit against the plaintiff before the District Munsif Court, Pochampalli and numbered as OS.No. 17/2020 and the same is pending. The advocate commissioner was appointed in the above said suit and inspected with help of surveyor. At the time of inspection it found that the encroachment of the plaintiffs and the said inspection not completed. After filed the suit against the plaintiffs the irrigating canal was removed. The canal starts from Mavathur lake and crossed in the S.No. 622. After removed the above said canal by the plaintiffs that defendant could not be irrigating the water to the coconut tree. Hence the petition is dismissed.

3. The Point for consideration is

Whether this petition is allowed or not?

4. Both side have not produced any oral or documentary evidence.

5. Point:

Both side heard. The learned petitioner counsel argued that the petitioners are the exclusive owner of the suit "A" Schedule properties and that the petitioners have been in exclusive possession and enjoyment into the same. The petitioners have paying Kist to the same to the Government promptly, The 2nd Plaintiff is the exclusive owner of the suit "B" Schedule Property. The first Defendant owned some property in Survey No: 631 which is situated on the extreme eastern side on the suit "A" Schedule properties and the second defendant owned some properties in survey Nos: 623 and 624 which are situated on the extreme Northern Side on the Survey Nos: 622/1A and 622/1B, But the Defendants have no manner of any right or title or possession into any portion of the suit properties, But the Defendants Joined together by intending to get unlawful gain, the first Defendant laid false claim into some portion of the Suit "A" Schedule properties which is situated on the extreme eastern portions of the suit Survey Nos: 622/1B and 622/2 by denying petitioners exclusive title into the same. As a matter of fact on 20.03.2021, the Defendants Joined together by denying their title into the suit "C" "D" and "E" Schedule properties and the first defendant attempted to encroach and trespass into the Suit "C" Schedule property and the Defendants 2 and 3 attempted to encroach and trespass into the suit "D" and "E" Schedule Properties, the advocate commissioner has to be appointed to measure and fix the boundaries of the suit properties. But the learned respondent counsel argued that the S.No. 631 is situated in the eastern side of the suit property and the said property belongs to 4th defendant through partition dated: 02.11.2006 and the same gifted to the 1st defendant on 30.11.2017 through settlement deed and on the same day the possession on the handed over. The 1st defendant enjoy the suit property till his death dated: 08.05.2023. After the death of 1st defendant the 4 to 7 defendants are enjoy the said property as legal heirs of the 1st defendant. This S.Nos. 623, 624/1 are belongs to 2nd defendant through sale deed dated: 13.03.1981 and enjoy the property till date. Further, a canal has across in the S.Nos. 623, 624, 631, 632. The owners of the properties near the canal are irrigating the

water from the said canal for the past 100 years and above. The plaintiffs intention to graph the land and damaged the varappu (indentation) in the S.No. 631.

On considering the above said arguments of the petitioners that it is necessary to inspect the suit property by the advocate commissioner for concluded the dispute between the parties and also considering the averments and admitted facts of the respondent that the 1st defendant filed a suit against the plaintiff before the District Muncif Court, Pochampalli and numbered as OS.No. 17/2020 and the same is pending and the advocate commissioner was appointed in the above said suit and inspected with help of surveyor and at the time of inspection it found that the encroachment of the plaintiffs and the said inspection not completed and after filed the suit against the plaintiffs, the irrigating canal was removed and the canal starts from Mavathur lake and crossed in the S.No. 622. After remove the above said canal by the plaintiffs that defendant could not be irrigating the water to the coconut tree. In the above said circumstances the Court inclined to appointment advocate commissioner for inspect the suit property. Because, if the suit property inspected by the advocate commissioner, it can be found that the canal is cross in the S.No. 631 and the said canal was damaged and removed by the petitioner and that the commissioner report will be helped to deicide this case. Further this Court consider that the owners of the properties near the canal are irrigating the water from the said canal for the past 100 years and above. Hence at this time if the petition is allowed the petitioners and respondents are not prejudiced. Hence this court inclined to allow the petition.

In fine, this petition is allowed and Advocate M/s. S.R. Manickaprabhu, is appointed as Advocate commissioner and his remunerate is fixed as Rs.8000/- and directly to be paid to the advocate commissioner by the petitioners. The advocate commissioner to visit and measure the suit properties as per the registered title deeds and Revenue Records inrespect of the suit properties with the hlep of qualified surveyor and VAO and note down the physical features of the suit properties and file his report and plan. Call on 17.07.2025.

Dictated by me to steno – typist and typed him directly at computer and corrected by me and pronounced by me in open Court on 19.06.2025.

Sd/- Thiru. P. Thirugnanasambandam, B.A., B.L.,
Subordinate Judge,
Uthangarai.

1. Petitioner side Documents: Nil

2. Respondent side Documents: Nil

Sd/- Thiru. P. Thirugnanasambandam, B.A., B.L.,
Subordinate Judge,
Uthangarai.