

**IN THE COURT OF DISTRICT MUNSIF UTHANGARAI
KRISHNAGIRI DISTRICT**

**Present : Thiru. G. Amar Anand, B.A.LL.B (Hons), LL.M.
District Munsif, Uthangarai**

On this Monday, the 18th day of December 2023

I.A.No. 01 of 2021 in O.S.No. 28 of 2021

TNKI13-000022-2021

1. K. Sekar
2. P. Baskar
3. T. Sampath
4. P. Chakaravarthi

...Petitioners / Plaintiffs

/versus/

1. Beemaraji
2. Santhi
3. Alagammal
4. Pravin Kumar

...Respondents / Defendants

This interlocutory application came up before this Court on 18.12.2023 for final hearing in the presence of advocate Thiru. K. Murugan, the learned counsel for the petitioner and advocate Thiru. S. Moorthi, the learned counsel for the respondent and upon hearing both sides and on perusal of records and having stood over for consideration till date, this Court delivers the following:

ORDER

The application has been filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 for issuance of commission to inspect the suit property and measure and note down the physical features such as the measurements of the pathway and the empty site and file report.

1. This Court, by order dated 25.04.2023, appointed learned advocate Thiru. B. Sathish as commissioner to inspect the suit property and to note down the measurements according to documents and file report along with sketch and

photographs. Accordingly, the commissioner has filed his report along the sketch and photographs on 15.09.2023.

2. The petitioners stated no objection, whereas, the respondents have filed objection to the report of the commissioner. The respondents have stated that the measurements and the survey numbers are wrong and that the cement road and bore well noted is also false. The respondents further aver that the commissioner failed to mention that the bore well is 2 meter away from the wall of the Chitra's house and further aver that it is incorrectly stated as a stone being fixed at the end of 17.4 meter in S.No. 19/31B at the southern side. The respondents further aver that the total area of the pathway in S.No. 19/31B is about 300 sq.ft. or 24 sq.m., however, the commissioner has incorrectly noted it as 15 sq.m. The respondents further aver that the remaining extent other than in the pathway in the S.No. 1/6K measures 36 sq.m., however, it is incorrectly noted as 150 sq.m. by the commissioner. The respondents aver that the commissioner failed to note down that the front portion of the house of Chitra is 2 feet away from S.No. 1/6K and it has been incorrectly stated that as if the pathway in S.No. 1/6R, 1/6S is running in S.No. 1/6K to extent of 2 feet. The respondents further aver that all the sub-divisions of S.No. 1/6 have not been surveyed. Hence, the petitioner avers that there is necessity for revisit and file additional report. The commissioner has filed a reply that the measurements mentioned are correct and accurate and has denied the objections of the respondents.

3. A perusal of the report of the commissioner along with the sketch and photographs would show that the manner and procedure adopted by the commissioner is proper, fair and without any infirmity. Further, the commissioner has noted down all the physical features of the suit properties, and their measurements and the structures surrounding it. Evaluating the objections of the respondents would show that they are only factual in nature, and could only be verified with actual measurements and the respondents have not filed any independent documentary

evidence or any other independent report of any expert to dispute the measurement. Nevertheless, the respondents have not filed any separate application for scrapping of the report or revisit or reissuance of new commission. Hence, this Court is of the considered view that the commissioner has acted proper in carrying out the warrant, and that there is no material to doubt the measurements noted by the commissioner in his report, and that the objections are only perfunctory in nature. It is a settled position of law that a report of the commissioner is not a substantive piece of evidence as proof of any fact averred by the parties and will serve only as an aiding material to appreciate the evidence let in by both parties. Further, it is a settled position of law that both parties are at option to let in evidence to contradict or discredit the report. Nevertheless, both parties have not filed any separate application for scrapping of report or re-issuance of commission or seeking revisit. Hence, this Court accepts the report of the commissioner along with its annexures as part of the record.

Result:

4. As a result, the report of the commissioner along with its annexures are accepted and are taken on record, and accordingly, this application is closed.

This order was dictated to the typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 18th day of December 2023.

District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

Petitioner side Exhibits: Nil

Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil

District Munsif
Uthangarai