

**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 Thursday, the 18th day of July 2024

I.A.No. 03 of 2023 in O.S.No. 69 of 2021

TNKI13-000081-2021

Mari @ Mariyappan

...Petitioner / Plaintiff

/versus/

1. Kaliyammal
2. Nadarajan
3. Sellakili
4. Dharmaraji
5. Nehru
6. Thirupathi

...Respondents / Defendants 1 to 6

This interlocutory application came up before this Court on 18.07.2024 for final hearing in the presence of advocate Thiru. N. Balaji Kumar, the learned counsel for the petitioner and advocate Thiru. T. E. Khaleel, the learned counsel for the respondents 2, 4 and advocate Thiru. K. Vadivel, the learned counsel for the 3rd respondent and notices to the respondents 1, 5, 6 was dispensed with 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 appointing of commissioner to inspect and measure the the suit property and note down the physical features with the aid of the Village Administrative Officer and a qualified surveyor.



The averments of the petitioner in brief:

1. The petitioner herein is the plaintiff in the suit instituted for declaration and injunction and avers that the suit property was originally entitled to one Arumugam and Krishnan as ancestral property which was purchased by the petitioner *vide* sale deed dated 12.03.2007 registered as Doc.No. 855/2007 for valuable consideration. The petitioner avers that the petitioner has been in exclusive possession of the suit property since the purchase and Patta No. 325 has also been issued by revenue authorities after proper survey in the name of the petitioner, the respondents are the land owners of the properties situated on the western, southern and northern sides of the suit property and the respondents, with ill intention to encroach, have been interfering with the possession of the petitioner. The petitioner avers that the petitioner has purchased 56 cents, however, the respondents are claiming that the petitioner has purchased only 46 cents and have been interfering with the possession of the petitioner. The petitioner avers that the predecessors-in-title possessed revenue records for 56 cents and the same has been surveyed and the property was purchased after confirming the extent. The petitioner avers that the respondents have been falsely claiming title over the property and issued legal notice dated 01.10.2021 to the petitioner and the respondents 2 to 6 containing false averments such as that the petitioner obtained Patta for more extent. The petitioner avers that when the petitioner was about to issue a reply notice, the respondents threatened the petitioner of dispossession by denying the title which was thwarted with the aid of commoners. Hence, this suit for declaration and injunction and the petitioner avers that it is necessary to appoint a commissioner to inspect the suit property with the aid of the surveyor and Village Administrative Officer and to file report along with sketch for elucidating the real facts to the Court. Hence, the petitioner prays for allowing this application.



The averments of the respondents in brief:

2. The 2nd respondent filed counter which was adopted by the 4th respondent and the 3rd respondent filed separate counter. Since, the averments of the respondents 2 to 4 readout to be similar, they are briefly stated as follows. The respondents aver that the property of the Arumugam and Krishnan is situated to the north of the cart pathway running adjacent to the respondents' property in S.No. 19/4 and since the cart pathway has not been shown, the respondents issued legal notice dated 01.10.2021 to the petitioner and the revenue authorities. The respondents deny the averments of the petitioner that the respondents attempted dispossession. The respondents aver that the Patta in the names of the Arumugam and Krishnan was only for 46 cents and a cart pathway runs adjacent to the property in S.No. 19/3 to access S.No. 19/4 and aver that the petitioner has obtained Patta for 56 cents to encroach the cart pathway. The respondents further aver that a commissioner cannot be appointed to find out evidence before trial in favour of any party and this application is not maintainable and seek for dismissal of the application.

The non-appearance of the respondents 1, 5 and 6:

3. The respondents 1, 5, 6 remained absent throughout the suit proceedings, hence, the notices to them was dispensed with to avoid delay in the proceedings.

Point for consideration:

4. Whether this application is liable to be allowed?

Evidence:

5. Neither of the parties to this application has adduced any oral evidence, but the petitioner marked Exhibits P1 to P7.



Discussion:

6. This Court, having considered the arguments advanced on both sides and thoroughly examined the pertinent case records, proceeds to delineate its findings by the following discussion. This suit has been instituted for declaration of title of the petitioner over the suit property in S.No. 19/3 to the total extent of 56 cents and for consequential perpetual injunction. It is the case of the petitioner that the petitioner purchased 56 cents in S.No. 19/3 from one Arumugam and Krishnan and that the respondents are denying the title of the petitioner to an extent of 10 cents. It is also the case of the respondents that the petitioner is entitled to only 46 cents and not 56 cents and it is the petitioner who has obtained documents in excess of what was actually entitled to his predecessors-in-title namely Arumugam and Krishnan. The petitioner has marked Exhibits P1 to P7 in support of his application. Exhibit P1 is the registration copy of the sale deed showing purchase of the suit property by the petitioner from his predecessors-in-title namely Arumugam and Krishnan. A perusal of Exhibit P1 shows that the suit property was stated to be ancestral properties of the said Arumugam and Krishnan and 56 cents in S.No. 19/3 have been sold to the petitioner. Exhibit P2 is the Computer Chitta for Patta No. 325 standing in the name of the petitioner for the suit property measuring 0.22.50 hectare which is 56 cents. Exhibit P3 is the series of *kist* receipts standing in the name of the petitioner for Patta No. 325 and 318. Exhibit P4 is the photostat copy of the complaint lodged by the petitioner with the Inspector of Police, Uthangarai Police Station alleging disturbance by the respondents. Exhibit P5 is the legal notice issued by the respondents 2, 4, 5, 6 to the petitioner and revenue authorities claiming that the petitioner has purchased 56 cents which is more than what was entitled to his predecessors-in-title and that the extent and boundaries are incorrect. Exhibit P6 is the guideline value report. Exhibit P7 is the encumbrance certificate showing Exhibit P1. A perusal of Exhibit P1 to P7 would show that the petitioner has purchased 56 cents from Arumugam and Krishnan



in S.No. 19/3 and subsequently Patta has also been issued to the petitioner for the same extent. However, the respondents herein deny that the predecessors in title of the petitioner did not possess 56 cents and had only 46 cents and further alleged that there is a cart pathway under usage by the respondents to access their respective properties. This is evident from Exhibit P5 wherein the respondents have denied title of the petitioner to the extent of 10 cents. The respondents have not filed any document in support of their case and further the petitioner has also not filed any document to show that the predecessors-in-title of the petitioner possessed title to an extent of 56 cents.

7. The averments of the petitioner contained in this application is only the reiteration of the averments in the plaint and the petitioner has not shown any reason as to why appointment of commissioner to note down physical features of the suit property is necessary. The averments of both sides indicate denial of title of the petitioner over a piece of land extending to 10 cents which is adjacent to the respondents' properties which is claimed to contain a cart pathway under the usage of respondents. These averments does not reveal any dispute with respect to any physical features of the suit property and there is no dispute with respect to inconsistency with documents and topographical measurements. It is the clear case of the respondents that the petitioner has no title over the 10 cents wherein a pathway runs. But the petitioner failed to produce the Patta or revenue records which stood in the name of the predecessors-in-title namely Arumugam and Krishnan and also failed to produce the FMB of the suit property. In absence of such documents to support the averments of the petitioner, it can be only construed that the petitioner is attempting to collect evidence for his possession. It is a settled position of law that commissioner cannot be appointed to collect evidence and it is the duty upon the petitioner to show that issuance of commission for local inspection is necessary upon the legally permissible grounds such as dispute regarding location, extent, measurements,

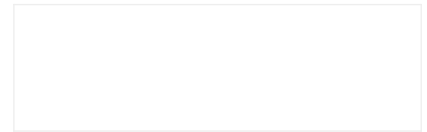


topographical structures or other peculiar grounds which warrant necessary local inspection. Considering the averments in the light of the documents produced, this Court is of considered view that the petitioner failed to show any permissible grounds under law as to why appointment of commissioner for local inspection to measure the suit property is necessary and this Court is of considered view that commissioner for noting down the physical properties is not necessary. Hence, this Court is not inclined to allow this application.

Result:

8. ***As a result, this application is dismissed. No cost.***

This order was dictated to the steno-typist and transcribed by her on computer and after rectification of mistakes, pronounced by me in open court on this 18 day of July 2024.



District Munsif
Uthangarai

Annexure

Petitioner side evidence

Petitioner side Witnesses: Nil

Petitioner side Exhibits:

Exhibit	Date	Document	Remarks
P1	12.03.2007	Sale deed (Doc.No. 855/2007)	Registration copy
P2	15.06.2021	Computer Chitta for Patta No. 325	Computer copy
P3	--	Series of <i>kist</i> receipts (6 in number)	Original
P4	--	Complaint lodged by the petitioner	Photostat copy
P5	01.10.2021	Legal notice to the plaintiff	Certified copy
P6	--	Guideline value report	Computer copy
P7	28.10.2021	Encumbrance certificate	Computer copy

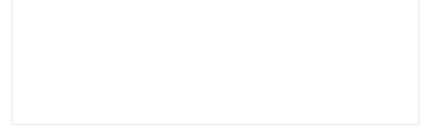


Respondent side evidence

Respondent side Witnesses: Nil

Respondent side Exhibits: Nil

Court Documents: Nil



District Munsif
Uthangarai