

**IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF,
NAGERCOIL.**

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,
I Additional District Munsif, Nagercoil.

Monday, on the 25th day of November, 2024.

I.A. No. 5 of 2024

in

O.S. No. 70 of 2022

CNR. No.TNKK04-000103-2022

A.Felix Mohan

... Petitioner/Plaintiff

-vs -

1. F.Harwin Anto

2.F.Merfwinn Anto

... Respondents/Defendants

This Petition came before this Court on 7.11.2024 for final hearing. Mr. T.Thankaraj, Learned Counsel for the Petitioner and Mr. Brightwin Xavier, Learned Counsel for the 1st Respondent. 2nd Respondent set as exparte. Upon hearing the Arguments of both sides and Upon perusing the case records and having stood over till date for Consideration, this Court hereby delivers the following:

ORDER

1. The Petitioner has filed the above Petition Under Order XXVI Rule 9 Code of Civil Procedure, seeking an order to appoint an Advocate Commissioner to note down the following Points:

1. To note down the Physical Features of Petition Schedule Property.

2. To note down the tin sheet on the eastern side of Petition Schedule Property.
3. Such other Points to be noted, at the time of Commission Visit.

2. The Petitioner has stated that he has filed the above suit, against the Defendant, seeking Permanent Injunction from interfering with his possession and enjoyment in respect of the Plaintiff Schedule Property. The 1st Defendant had trespassed into the Plaintiff Schedule Property on 25.09.2024 and started putting up a Tin Sheet on the Eastern Portion of the Petitioner's Property. The further constructions were stopped due to the Petitioner's intervention.

3. The 1st Defendant is the owner of a property abutting on the eastern side of Petitioner's Property. With intention to grab a portion of the Petitioner's Property, he attempted to put up a Tin Shed on the Eastern Side of the Plaintiff Schedule Property. Appointment of Commission for local inspection is very much necessary to spotlight the physical features and the mischief, committed by the 1st Defendant on the Eastern Side of his Property. Hence the above Petition has been filed seeking appointment of Advocate Commissioner for local inspection to note down the above stated points.

4. The Respondent had filed Counter stating that the Petition is not maintainable in law and on facts. The Respondents, their mother and younger brother are in possession and enjoyment over the Plaintiff Schedule Property and more area. The Petitioner has no manner of right, title or possession over the Plaintiff Schedule Property. As the Petitioner is not in possession of the Property, the question of trespass by the 1st Respondent does not arise. The Respondents, their mother and

younger brother have every right to enjoy the Property Legally. The averment regarding attempt of putting tin shed in the Petition Schedule Property are concocted stories.

5. The Petitioner filed the above suit seeking Permanent Injunction. It is settled proportion of law that commissioner, cannot appointed to prove or find out the factum of possession. The issue is to be decided in the suit is whether the Plaintiff is in legal possession of the Plaint Schedule Property or not, the same has to be proved by adducing proper documentary and oral evidence and not by appoint Advocate Commissioner. The Petition is a Clear abuse of process of Court, the appointment of Advocate Commissioner is not at all needed to decide the subject in issue. The above Petition is nothing but a collection of evidence, through Advocate Commissioner is not Permissible in law and only to drag on the legal proceedings. Hence the Respondents prayed for dismissal of the above Petition.

6. The Point for Consideration is Whether the above Petition is liable to be allowed or not?

7. The Petitioner has stated that pending suit on 25.09.2024, the 1st Defendant had trespassed into the Plaint Schedule Property and started to put up a Tin Shed on the eastern portion of my property. The Respondents have stated that the Respondents, their mother and younger brother have every right to enjoy the Property Legally. The Petitioner had described the East of the Petition Schedule Property as Purayidam of Jerin. However in the affidavit, filed in support of the above Petition,

the Petitioner had stated that the 1st Defendant is the owner of the property, abutting on the eastern side of the Petitioner's Property. Since it is stated that pending suit, an attempt has been made to alter the nature of the suit property and that the Eastern Boundary of the Petition Schedule Property is said to be the 1st Defendant's Property, this Court is of the Considered view that the Petitioner's plea seeking issuance of Commission could be allowed, in order to ascertain, whether any change of nature of the suit property, has been made pending suit.

In the result, the above Petition is allowed, and Advocate Mrs. Sankari (Enr. No.954/11) (Mobile No.9994960355) Junior of Advocate V.Kannan, is appointed as an Advocate Commissioner to note the physical features of the suit properties and to measure the suit properties for the purpose noted in the Petition, after giving due notice to both parties and file Report along with Plan, at the earliest. Her Renumeration is fixed at Rs.8,000/-(Rupees Eight Thousand Only), which sum, the Petitioner shall directly pay to the Advocate Commissioner and file Proof for Payment of the same. For filing proof as to payment of Commissioner's Renumeration. Call on 06.12.2024.

Dictated to the Steno-Typist, transcribed and typed by her in the Computer, corrected and pronounced by me, in open Court this, the 25th day of November, 2024.

Sd/-

I Additional District Munsif,
Nagercoil.

Petitioner's side witnesses & documents : Nil.

Respondents' side witnesses & documents : Nil.

Sd/-

I Additional District Munsif,
Nagercoil.

*I ADMCourt, Nagercoil.
Draft/Fair Order in
I.A.No.5/2024 in
O.S.No.70/2022
Date:25.11.2024.*