

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

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

Monday, on this the 4th day of September 2023

I.A.No.3 of 2022
in
O.S. No. 224 of 2021

Sakthivel

... Petitioner/Plaintiff

-VS-

1. Manikandan

2. V.K.Mala

... Respondent/Defendants

This Petition came up before this Court on 21.08.2023 in the presence of Thiru. J.Partha Sarathy, Advocate for the Petitioner/Plaintiff and Defendants was already set exparte and petitioner side heard and upon perusing the case records and having stood over for consideration till this day, this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition Under Order XXVI, Rule 9 of CPC seeking an order for appointment of Advocate Commissioner to note down the following points.

1. To note down the physical features of the plaint schedule properties.

2. To measure the plaint schedule property and note down the encroachments and constructions put forth by the defendant in the plaint B schedule property.

3. To note down the old bathroom in the plaint schedule properties and adjacent to it.

4. To note down the damages caused by the defendant on the walls of the plaintiff's house of plaint A schedule property.

5. To note down the defendant property and its physical features.

6. To note down such other points that are necessary for the proper adjudication of the suit.

2. The petitioner had stated that he had filed above suit for declaration and for other reliefs. The Petitioner is a absolute owner of the plaint schedule property acquired the same under Partition Deed bearing document No.1993 of 2011 Vadasery Sub Register Office. The extent of the land is 1.875 cents as per documents. However, as per lie, Petitioner is in possession and enjoyment of 1.482 cents.

3. The Plaint Schedule Property and other properties was originally belonged to the Petitioner's father late.Enakulamuthu. He conveyed 3.75 cents as per lie only 3.23 cents, to the second defendant's mother Vijaya Amma. She had executed Sale Deed dated 28.07.2019 bearing document No.1497/2019 in favour of the Defendant. The said property lies North to Plaintiff Property. The Plaintiff has constructed a house in Plaint A Schedule Property and left vacant

land measure 110 sq.ft for putting up bore well, which property is B Schedule Property, including a asbestos sheet, old toilet. Adjacent to it, the Defendant's property is situated.

4. Further the Respondent had encroached B schedule property, as the Plaintiff went to relatives house on 04.10.2021 and returned on 06.10.2020. They found the defendants encroached the plaintiff property and damaged the plaintiff's northern wall. Upon Police complaint, under enquiry the respondent agreed to remove the encroachment and repair the wall. However, he had not kept up his promise. The Plaintiff has door from his house to have access to Plaintiff B Schedule Property. Hence, the Plaintiff has filed the suit for Declaration of Title and for Injunction against the Respondent. In order to note down the encroachment in the Plaintiff Schedule Property and the physical feature of Property the above Petition has been filed.

5. The Respondent have not file any counter. Hence, they were set exparte.

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

7. On perusal of the plaint the Petitioner had sought for Mandatory Injunction, directing the defendant to remove the construction made in Plaintiff B Schedule Property and for other relief. The Petitioner had stated that the Defendant property as well as Petitioner's property was originally owner by the Petitioner's father late.Enakulamuthu and that the lie of the property is Different

from the Title Deed. Hence, this Court is of the considered view that the Plaintiff's Property as well as the Defendant's Property could also be measured, along with the Points mentioned in the Petition.

In the result, this petition is allowed. Advocate Mrs.G.Velam, Enroll No. MS.3529/2011(Cell No.9486620188), is appointed as Advocate / Commissioner. Her remuneration is fixed at Rs. 8,000/- (Rupees Eight Thousand Only) to be payable by the Petitioner directly to the Advocate Commissioner. The Advocate Commissioner, is directed to inspect the petition schedule properties and note down the following:-

1. To note down the physical features of the plaint schedule properties.
2. To measure the plaint schedule property and note down the encroachments and constructions put forth by the defendant in the plaint B schedule property.
3. To note down the old bathroom in the plaint schedule properties and adjacent to it.
4. To note down the damages caused by the defendant on the walls of the plaintiff's house of plaint A schedule property.
5. To note down the defendant property and its physical features.
6. To note down such other points that are necessary for the proper adjudication of the suit.
7. To measure the Plaintiff's Property as well as the Defendant's

Property.

and file report with plan, at the earliest from the date of receipt of Commissioner's warrant.

Dictated to the Steno-Typist, and typed by her, corrected and pronounced by me, in open Court this, the 04th day of September, 2023.

I Additional District Munsif,(FAC)

Nagercoil.

Petitioner side witnesses and documents : Nil

Respondents side witnesses and documents : Nil

I Additional District Munsif,(FAC)

Nagercoil.

I.A. No.3 of 2022 in
O.S. No.224 of 2021
Draft/Fair Order
Date:04.09.2023.
IADM, Nagercoil.

