

In the Court of the II Additional District Munsif, Nagercoil

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

Monday, on this the 21st day of November 2022

I.A. No.5 of 2021

in

Original Suit No.98 of 2015

T. Senthilmani

.. Petitioner/Plaintiff

-VS-

1. Mahendra kumar

2. Anusha

3. Thangachitra

.. Respondents/Defendants

This Petition came up before this Court on 4.11.2022, in the presence of Thiru.K.Subaharavel Advocate for the Petitioner and Thiru.T.Prabhu Advocate for the 1st & 2nd Respondents and 3rd Respondent set exparte on hearing both sides arguments and upon perusing the case records and having stood over for consideration till this day, this Court deliveres the following.

ORDER

1. The Petitioner had filed the above Petition under section 75, Order XXVI Rule 9 CPC, seeking an order to appoint an Advocate Commissioner to make a local inspection in the Plaint Schedule Property and note down the physical feature of the Plaintiff's property and Defendant's property, 1. To note the physical features of the Plaint schedule property and the defendants property. 2. To measure the defendant's

property as per his sale deed. 3. To note down the construction put up by the defendant in his property.

4. Such other points to be noted at the time of the visit of the Commissioner.

2. The Petitioner had stated that he had filed the above suit for bare injunction against the Defendants forbearing them from disturbing his peaceful possession and enjoyment of the Plaint Schedule Property, by trespassing or otherwise. The Petitioner had further stated that he is the owner of the Plaint Schedule property measuring 2 Cents and 750 Sq.links comprised in R.S. No. 533/11 Kanyakumari Village and that his dwelling house is situated in the Plaint Schedule Property.

3. The Petitioner had further stated that the Plaint Schedule Property and another portion of the property situated on the Northern Side of the Plaint Schedule Property, having a total extent of 4.875 cents, originally belonged to Ramaiah Nadar, the Grand Father of the Plaintiff. The said Ramaiah Nadar died on 01.11.1977, leaving his only son Thangamani, who is the Plaintiff's father and two daughters as his legal heirs. Upon the demise of Ramaiah Nadar, the said property devolved on his children and they were enjoying the said property.

4. The Petitioner had further stated that the Plaintiff, his father, his aunt have jointly executed release deed bearing Doc. No. 523 of 2014, Kottaram SRO., in respect of the said 4.875 cents in favour of another aunt namely Thangachitra the 3rd Respondent herein. Further out of the said 4.875 cents, the 3rd Defendant had sold 2.12 cents to the 1st Defendant under Sale Deed bearing Doc. No. 634 of 2015 Kottaram SRO, by mentioning measurements on all sides.

5. The Petitioner had further stated that the 3rd Defendant executed Settlement Deed bearing Doc. No. 633 of 2015, in respect of southern side 2.750 cents of property out of the larger extent of 4.875 cents. Since then the Petitioner is in absolute exclusive possession and enjoyment of the said property. After purchase of the property, the 1st Defendant had built basement using cement mortar, burying bricks on all sides boundaries and enjoying his property.

6. Further on 11.03.2015 all of a sudden, the 1st Defendant has claimed a portion of the Plaint schedule property stating that he is entitled to more area than the area, he is entitled too and attempted to trespass, the same was thwarted. Having failed in his attempt, the 2nd Respondent gave complaint and the Police Authorities have threatened the Petitioner to leave a portion of the suit property. Further with the intention to engulf the portion of the Plaint schedule property, the respondent is trying to alter the physical features. Hence the Petitioner had filed the above Petition.

7. In the Counter filed by Respondents 1 & 2, the Respondents 1 & 2 have stated that the above Petition is after thought, not bonafide, the Petitioner had not come up with Clean Hands, the above Petition is not maintainable, appointment of advocate commissioner to ascertain physical possession is not maintainable. The settlement deed in favour of the Petitioner is invalid one and cannot be acted upon. There is no necessity to measure the Plaint Schedule Property based on the 1st and 2nd Respondent's Sale Deed.

8. The 1st and 2nd Respondents have made construction in their land, during the year 2015 itself. The above Petition at this juncture is not maintainable. The above

Petition has been filed to protract the case. There is no merit in the above Petition, the same is frivolous and vexatious and liable to be dismissed.

9. The Point for consideration is whether the above Petition is liable to be allowed or not i.e. whether an Advocate Commissioner has to be appointed or not?

10. From the facts stated in the affidavit filed in support of the Petition, it could be seen that both the Petitioner and Respondents 1 & 2 have acquired title from one and the same person namely the 3rd Respondent. Further it is also stated that the 3rd Respondent had dealt with only the extent of land that she had purchased.

11. The Petitioner had stated that his dwelling house is situated in the Plaint Schedule Property and that the Respondents 1 & 2 have built basement, by using cement mortar, burying bricks on all sides boundaries. On the other hand the Respondents 1 & 2 have stated that they have put up construction, even during the year 2015 itself. Such being the case, the Petitioner had stated that the Respondents 1 & 2 are trying to alter the physical features of the Plaint Schedule property. Since it is found that the Petitioner's as well as the 1st and 2nd Respondent's vendor had conveyed only the extent of property, which she was entitled too, this Court is of the considered view that noting down the physical feature and measuring the Plaint Schedule Property and Measuring the 1st Respondent's property, as per his sale deed will not amount to collection of evidence. Rather it will throw light on facts, which would be germane for adjudicating the above suit.

11. In view of the above said legal preposition, appointment of an advocate commissioner in the above Petition would sub serve the due adjudication of the suit.

Hence this Court here by appoint **Mrs.T.SARANYA, ENRL No. M.S.No.1984/2019, Mobile No.9025535211** an Advocate commissioner in order to inspect the suit schedule properties with the assistance of the surveyor and file report along with plan. The remuneration of the advocate commissioner is fixed as Rs.8,000/- (Rupees Eight Thousand Only).

In the result, this Petition is allowed. The Petitioner is directed to furnish copy of the Sale Deed dated 25.02.2015 in favour of the 1st Respondent to the Advocate Commissioner for the purpose of inspection.

This Order is dictated to the Stenographer and typed by her directly in computer and after making necessary corrections, pronounced by me in the Open Court on this the 21st day of November 2022.

II Additional District Munsif,
Nagercoil.

Petitioner side witness and document :- Nil.

Respondent side witness and document :- Nil.

II Additional District Munsif,
Nagercoil.