

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

Present: Tmt. M.Alima, B.A., L.L.M.,

I Additional District Munsif, Nagercoil.

Wednesday, on the 13th day of March, 2024.

I.A. No. 3 of 2022 in O.S. No. 204 of 2022

P.Dhurai

... Petitioner /Plaintiff

- Vs -

C.Arjun

... Respondent/Defendant

This petition came before this court on 22.02.2024 for a final hearing in the presence of Mr. T.Shunmugam, Advocate for the Petitioner/Plaintiff, and Mr. T.Santhosh Kumar, Advocate for the Respondent. Upon hearing the petitioner side, perusing the case records, and having stood over for consideration till this day, this court hereby delivers the following:

ORDER

The petitioner had filed the above petition under Order 26, Rule 9, and Section 151 of the CPC, seeking the appointment of Advocate/Commissioner to note down the points as asked for in this application and to file a comprehensive report.

1) Gist of the Averments in the Petitioner /Plaintiff's Petition:

The Petitioner/Plaintiff had stated that this suit was for Demarcation, Permanent Injunction, and other reliefs. The petitioner craves leave of this court to read the averments contained in the body of plaint as part and parcel of this affidavit. In the nature and circumstances of the case at hand, it has become highly essential

that an order be passed for the appointment of an advocate commissioner to note the physical features of the plaint schedule property and to note such other points as sought in the accompanying application. Without the appointment of an Advocate Commissioner to note the points as asked for in the accompanying application, issues in the suit cannot be effectively and properly adjudicated. Appointment of an Advocate/Commissioner would go a long way in promoting the cause of justice. Hence, it has become highly essential that an order be passed by this Court for the appointment of an Advocate/Commissioner to note down the points as asked for in the accompanying application and to file a comprehensive report thereof; otherwise, he will be put to irreparable loss and injury.

2) Gist of the Averments in the Respondent's Counter:

The petitions that have been filed by the plaintiff restraining the respondent and their men and servants, anybody claiming under them, from disturbing (or) cutting and removing the trees standing in the petition schedule property and in any way interfering with the petitioner's peaceful possession and enjoyment of the petitioner over the petition schedule property, and for appointment of an Advocate/Commissioner are not at all maintainable in law or on facts. The petition is, prima facie, not maintainable. The suit itself is not maintainable. In such a suit, no interlocutory application can be maintained. The Plaintiff/Petitioner has filed this suit and the petition through suppression and misrepresentation of facts. The Plaintiff/Petitioner is guilty of misuse of the process of the court. The description of property contained in the plaint schedule is incorrect and misleading. There is no

property on land as described in the plaint schedule. The plaintiff has no prima facie case to claim an injunction. The balance of convenience is also against the plaintiff in the matter of claiming an injunction. If any injunction is granted, the respondent/defendant will be subjected to great hardship, loss, and inconvenience. The plaintiff's attempt of the plaintiff in filing the application claiming appointment of Advocate/Commissioner is to gather evidence. This cannot be entertained. The defendant is filing his written statement today. The respondent/defendant adopts all averments and contentions contained therein as part of this counter. So the same can also be read as part of this counter. The petition is devoid of merit and good faith. The averments contained in the affidavit filed in support of the petition are not correct and hence denied.

3) The point for consideration is whether the above petition has to be allowed or not?

4) Point:

This Court considers the submissions of both counsels and peruses the materials on record. Originally, the suit was filed by the petitioner/plaintiff against the respondent/defendant, seeking relief of demarcation and fixation of boundaries of plaint schedule property, a permanent injunction, and other reliefs.

5) The petitioner/plaintiff has filed this application for the relief of appointing an advocate commissioner to note down the points as asked for in this application and to file a comprehensive report.

6) On perusal of plaint, it is revealed that there is a boundary dispute pending with respect to suit property. In such circumstances, this court is inclined to allow this application.

7) As a result, this petition is allowed, and Advocate Mrs.R.Usharani M.S.No. 514/2010 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 this petition with the help of a Taluk Surveyor after giving due notice to both parties within a period of one month. Her fee is fixed as Rs.5,000/-, which is to be deposited before this court, and a memo is to be filed in this court. Call on 10.06.2024.

Dictated to the Steno-Typist, and typed by her directly in the Computer, corrected and pronounced by me, in open court this, the 13th day of March, 2024.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

*I ADM Court, Nagercoil.
Draft/Fair Order in
I.A.No.3/2022 in
O.S.No.204/2022
Date: 13.03.2024*