

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF  
PADMANABHAPURAM.

Present: Thiru.A.Maruthupandi, B.Com., B.L.,  
Principal District Munsif .

Monday the 28<sup>th</sup> day of August 2023

**I.A. No. 01/2023**

**in**

**O.S. No.11/2023**

Durai Raj

.. Petitioner/Plaintiff

/Vs. /

1.Thomas

2. Antony Ammal

.. Respondents/ Defendants

This petition is coming before me for final hearing in the presence of Mr.A.Vimalan, learned counsel for the petitioner/Plaintiff and Mrs. P.Jasmine Antony, learned counsel for the respondents/ defendants. Upon hearing the counsel on both side and on perusal of the records stood over for consideration till this day, this court passed the following :-

**ORDER**

This petition is filed under Order 26 Rule 9 and Section 151 of Civil procedure Code to appoint an Advocate Commissioner.

**2. THE AVERMENTS IN THE PETITION IN BRIEF :-**

- i) The petitioner/Plaintiff stated that the suit is filed for permanent

injunction. The property having an area of 14.227 cents in Resurvey no.587/2A3A. The petition schedule property to Ramaswamy Pillai's son Pushpakharan. The said Pushpakaran sale deed to the petitioner/plaintiff vide Deed No.1354/1985 dated 15.07.1995. The petitioner/plaintiff is a paying the land tax due to the Government. The respondents/defendants are the owners of the property adjoining the petitioner property on the north side. On 09.01.2020 the respondents/defendants uprooted and damaged the boundary stones on the northern side of the petitioner property belonging to the plaintiff and dumped the brick waste into the suit property.

ii) Therefore, the petitioner/plaintiff lodged a complaint against the 1<sup>st</sup> respondent/1<sup>st</sup> defendant at Thackalay police station. The above complaint was received as 37/2020. The Assistant Inspector who investigated the petition advised that the matter related to the petition be resolved through the Court of Law as it is a legal issue. The respondents/defendants have no right to encroach on the stones in the petitioner's/plaintiff's property. Therefore, it was filed that the northern boundary of the petitioner property should be determined and a court commissioner should be appointed and a report and plan. Hence, this petition.

**3. THE AVERMENTS IN THE COUNTER FILED BY RESPONDENTS/ DEFENDANTS ARE IN BRIEF:**

i) The petition must be dismissed outright as filed illegally and based on false information. The complaint was closed without taking any action at the police station because the petitioner had lodged a false complaint. The respondents/defendants did not engage in any action. They are old men. The property is entitled to the respondents/defendants vide sale deed No. 1306/2011 registered by the Thuckalay Registrar office of Deeds on 27.04.2011 at a sale deed from Sunimol. Hence, this petition is liable to be dismissed.

**4. POINTS FOR DETERMINATION:**

Whether the petitioner/plaintiff is entitled to the relief as prayed for or not?

**5. DISCUSSION AND ANALYSIS :-**

Petitioner's side argued. Respondents' side not argued. Documents perused carefully.

i) The counsel for petitioner/plaintiff argued that the petition schedule property was purchased by the petitioner/plaintiff from one Pushbhakaran on 15.07.1985 and after that he has been in possession and enjoyment over the same and got patta in his name and paying taxes to the Government. But, the

respondents/defendants have no manner of right over the petition schedule property. The respondents/defendants are the adjacent owners of northern side of petition schedule property. On 09.01.2020 the respondents/defendants trespassed into the petition schedule property and removed the boundary stones of northern boundary of petition schedule property, hence the petitioner/plaintiff lodged a complaint before the Thuckalay Police and the said police enquired the matter and finally advised the both parties to file a civil suit stating that it is a civil in nature. The learned counsel for the petitioner/plaintiff further argued that when the petitioner/plaintiff went to the petition schedule property, on 22.01.2013 he found that the respondents/defendants removed the boundary stones of northern boundary of petition schedule property, hence this petition is filed to appoint an advocate commissioner to fix the northern side boundary of petition schedule property on the basis of a Re-survey plan.

ii) On perusal of materials it is found that the petitioner/plaintiff has no rights to seek a remedy of fixation of boundary only on the basis of a Re-survey plan instead of he has to seek a relief that the northern boundary of petition schedule property has to be measured and fix the boundary on the basis of his title deed along with Re-survey plan (Revenue records), but he sought a relief to fix the northern boundary only on the basis of a Re-survey

plan, hence the said relief can not be granted one, because of, firstly we have to scrutinize the extent of rights of the petitioner/plaintiff over the petition schedule property that how much extent he has got in Re-survey No.587/2A3A then only this court can pass an order to measure and fix the northern boundary of petition schedule property.

iii) The petitioner/plaintiff has to seek a relief of fixation of northern boundary of petition schedule property on the basis of his title deed and Re-survey plan. Because of, if a boundary is fixed merely on the basis of a Re-survey plan then the petitioner/plaintiff as well as the respondents/defendants may get more or less extent than actual extent of their respective properties and moreover if the petitioner/plaintiff is permitted to fix the northern boundary of petition schedule property "only on the basis of a Re-survey plan" then prejudice would be caused to the respondents/defendants as well as owners of adjacent petition schedule property. Hence, he is not entitled to get a relief as prayed by him.

## **6. DECISION:**

In the result, Petition is dismissed.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 28<sup>th</sup> day of August, 2023.

Principal District Munsif  
Padmanabhapuram.

PDMC, Padmanabhapuram.  
I.A.No.1/2023 in O.S.No.11/2023  
Draft/Fair Order:  
Dt:28.08.2023.