

IN THE COURT OF PRINCIPAL DISTRICT MUNSIF  
PADMANABHAPURAM.

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

Wednesday, the 9<sup>th</sup> day of November 2022

I.A. No. 03 of 2020

in

O.S. No.23 of 2020

R. Jeya Raj

.. Petitioner/Plaintiff

/ Vs. /

1. The state ofTamil Nadu
2. Rejeenal
3. Vijayan
4. Rani
5. Sindu Mary

.. Respondents/Defendants

This petition is coming before me for final hearing, in the presence of Mrs.T.Jeya Prasad, learned counsel for the petitioners and and learned Government Pleader, for the 1<sup>st</sup>Respondent/ 1<sup>st</sup> Defendant and the R2 to R5 called absent and set exparte. Upon hearing the counsel for petitioner 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 XXVI 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 is filed the suit for permanent injunction. The property scheduled here under is a government land and a specific plot measuring an area of 75 cents in Re.Survey No.6 of Pechipparai Village was in possession and enjoyment of Rajayyan, the father of him and respondents/defendants 3 to 5 and husband of 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant. While so his father died on 12.02.2020 and his right over the property devolved on his heirs, himself and respondents/defendants 2 to 5.

ii) While so, the 1<sup>st</sup> respondent/1<sup>st</sup> defendant has taken major portion of 75 cents for the purpose of periar Ninaivu Samathuvapuram at pechipparai leaving an area of 24 cents and 640 sq.links which is now in possession of his family. The suit property there is a house bearing door No.13/51/2. While so, a B.Memo case was initiated against the father of him on 2206.1994 for 30 cents in R.S.NO.6. The names of himself and 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant are included in the voters list. The petitioner paid tax for the house bearing door No.13/51/2. The respondents/defendants 2 to 5 are in possession and enjoyment of the suit property, a plot a left out by the 1<sup>st</sup>respondent/1<sup>st</sup> defendant after taking a major portion of 75 cents in R.S.No.6. In the northern portion of the suit property there are two graves of his father and his mother.

iii) The mother of 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant had filed several petitions

before the Tahsildar, Thiruvattar for the issuance of patta for the land in which they are avoiding for years together. The petitioner also sent a suit notice to the 1<sup>st</sup> respondent/1<sup>st</sup> defendant on 4.03.2020 and the receipt of the same was acknowledged by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant. The 1<sup>st</sup> respondent/1<sup>st</sup> defendant has issued patas for those who are allotted house and house sites. So, the 1<sup>st</sup> respondent/1<sup>st</sup> defendant issued patta for the land in which we are residing. Now, the 1<sup>st</sup> respondent/1<sup>st</sup> defendant are taking efforts to evict him and respondents 2 to 5/defendants 2 to 5. We are living there under fear of dispossession out of the suit property. His family including respondents 2 to 5/defendants 2 to 5 are residing in the suit item for more than 80 years. There is no relief so far to them and so, the petitioner/plaintiff constrained to file the suit. The last attempt by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant to evict him was on 28.02.2020. Hence this petition is filed.

3. No counter filed on the side of 1<sup>st</sup> respondent/1<sup>st</sup> defendant.

4. POINTS FOR DETERMINATION:

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

5. DISCUSSION AND ANALYSIS:

Petitioners' side heard. Records perused carefully.

i) The petitioner/plaintiff is filed the suit for permanent injunction. The property scheduled here under is a government land and a specific plot measuring an area of 75 cents in Re.Survey No.6 of Pechipparai Village was in possession and enjoyment

of Rajayyan, the father of him and respondents/defendants 3 to 5 and husband of 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant. While so his father died on 12.02.2020 and his right over the property devolved on his heirs, himself and respondents/defendants 2 to 5.

ii) While so, the 1<sup>st</sup> respondent/1st defendant has taken major portion of 75 cents for the purpose of periar Ninaivu Samathuvapuram at pechipparai leaving an area of 24 cents and 640 sq.links which is now in possession of his family. The suit property there is a house bearing door No.13/51/2. While so, a B.Memo case was initiated against the father of him on 2206.1994 for 30 cents in R.S.NO.6. The names of himself and 2<sup>nd</sup> respondent/2<sup>nd</sup> defendant are included in the voters list. The petitioner paid tax for the house bearing door No.13/51/2. The respondents/defendants 2 to 5 are in possession and enjoyment of the suit property, a plot a left out by the 1<sup>st</sup> respondent/1<sup>st</sup> defendant after taking a major portion of 75 cents in R.S.No.6. In the northern portion of the suit property there are two graves of his father and his mother.

iii) The suit has been filed for permanent injunction. According to the said relief, the petitioner/Plaintiff has to prove that he has been in possession and enjoyment of the suit schedule property by way of Document, so appointing an advocate commissioner is not necessary in the nature of suit, because of the advocate commissioner is appointing only (i) to examine the witnesses (ii) to make local

investigation (iii) for scientific investigation (iv) to perform a ministerial act (v) to conduct sale (vi) to examine accounts and (vii) to make partition but not "for collecting evidence."

**6. DECISION:**

Finally, Petition is dismissed.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 9<sup>th</sup> day of November 2022.

Principal District Munsif,  
Padmanabhapuram.

PDMC, Padmanabhapuram.

I.A.No.3/20 in O.S.No.23/2020

Draft/Fair Order:

Dt: 9.11.2022.