

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.

Present: Thiru.A.Maruthupandi, B.Com., B.L.,
Additional District Munsif, (Full Additional Charge)

Wednesday, the 10th day of August 2022

I.A No.02 of 2020
in
O.S No.92 of 2020

1. Shanthi
2. Prasanth

.. Petitioners / Plaintiffs

/ Vs. /

1. Sabitha
2. Ramaswamy
3. Vasanthakumari
4. Murughan

.. Respondents/Defendants

This petition is coming before me for final hearing, in the presence of Mr.T. Nelson, learned counsel for the petitioners and Mr.D.Justin Rajan, learned counsel for the 1st and 2nd respondents and Mr.S.K.Ajithkumar, learned counsel for the 3rd and 4th respondents. 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 XXVI Rule 9 and Section 151 of Civil procedure Code to appoint an Advocate Commissioner.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

The plaint schedule properties inclusive of its vast extent of 1.65.805 Acres originally belonged to one Podiyan Nadar. On 21.10.1961 the said Podiyan Nadar

executed a settlement deed No. 6659/1961 by dividing the entire of 1.65.805 Acre as 18 plots. As per the said partition deed except plot Nos.14 and 9, remaining 16 plots were allotted among the four sons of Podiyan Nadar namely (1) Kumaraswamy Nadar, (2) Kolappan Nadar, (3) Ramayan Nadar and (4) Chellappan Nadar. The reserved plot No.14 has been sold for valid consideration on the same date under deed No.6675/1961 to one Ponnu Nadathi. On 15.07.2013 the said Ponnu Nadathi sold her property to petitioners/plaintiffs under a sale deed No.1733/2013 which is plaint 'A' schedule property and the plot No.9 having an extent of 1.650 cents referred deed No.6659/1961 and 6675/1961 is plaint 'B' schedule property. The 'B' schedule runs from southern panchayat road to northern stream is a pretty old pathway to 'A' schedule ever since the date of the referred partition deed and settlement deed dated 21.10.1961 and sale deed dated 19.07.2013 respectively. The petitioners have been using the 'B' schedule pathway to plaint 'A' schedule property from 15.07.2013 and the petitioners' vendor's usage from 21.10.1961 without any interruption or obstruction till 07.10.2020 peacefully. The husband of the 1st petitioner expired on 18.09.2020. The 1st petitioner went to her daughter's home an advantage of the absence of the petitioners, the respondents erected compound wall, barbed wire fence and house foundation on 07.10.2020 encroaching upon the north and southern side of suit 'B' schedule property. The petitioner have lodged a police complaint on the date itself. But no action was taken. The petitioners are land locked and unable to access into the suit 'A' schedule property. In this circumstances, to appointment an

Advocate Commissioner is necessary to this suit. Otherwise the petitioners will be put to irreparable loss and hardship. Hence this petition.

3. THE AVERMENTS IN THE COUNTER FILED BY THE 1st AND 2nd RESPONDENTS IN BRIEF :-

The said document deed No.6659/1961 in the petition is not a partition deed. The said deed is a settlement deed and document No.6675/1961 conveys right to the vendee in respect of plot No.14 only and no right concerning plot No.9 at all. There is no property as plot No.9 in 1961 on subsequent thereto till date and the plot No.9 is not a pathway. It was provided in settlement deed for Kathakatha purpose. These plaintiffs did not use the alleged 'B' schedule property as pathway at any time and there is no property as 'B' schedule property. The plaint 'B' schedule property was not encroached upon as alleged. The plot No.9 remained together with the property of these defendants as a single plot. No compound wall was built a new and no new barbed wire fence was put up. The compound wall was constructed about 10 years ago. The foundation of his house for purpose of availing the help of the Government for the construction of a new house. The 3rd and 4th respondents are the vendees of the 2nd defendant in respect of 3.035 cents of property, which is portion of property bearing 7.500 cents which includes plot No.10, 15 and 9 which lie together as a single property. These respondents/plaintiffs have no cause of action. There is no property as 'B' schedule property on the site 'A' schedule property is not described correctly. Hence this petition is liable to be dismissed.

4. THE AVERMENTS IN THE COUNTER FILED BY THE 3rd AND 4th RESPONDENTS IN BRIEF :-

The said pathway referred in the petition plot No.9 is no way connected with the suit properties. The petitioners/plaintiffs had intention only scheduled the plot No.9 as 'B' schedule in the suit with ulterior motive. The petitioners and their vendor were and are using only the souther panchayat road as an acess to their property. The said pathway is a clear cut pathway and is still in existence. The petitioner and their vendor never used the northern pathway by the side of the Odai to reach the 'A' schedule property.. The petitioner had suppressed the existence of southern pathway and filed the suit by suppressed the true facts. The 3rd and 4th respondents never made any construction or obstruction in the 'B' schedule property on 07.10.2010. In the year 2012 the 3rd and 4th respondents had purchased 3.350 cents in Re.Sy.No.147/6 from the 2nd defendant for valid consideration. The property purchased by these respondents are distinct and definite having boundary stones and old barbed wire fences at the spot. This property was a rubber garden and in the year 2018 these respondents cut and removed the old trees and planted rubber saplings and is in possession and enjoyment of the same as absolute owner and after mutation they are paying revenue taxes in their favour. The petitioners have no right over the property purchased by these respondents. Hence this petition is liable to be dismissed.

5. POINTS FOR DETERMINATION :-

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

6. DISCUSSION AND ANALYSIS :-

Heard on both side. Oral and Documentary Evidences perused carefully.

(i) The petitioners/plaintiffs state in the affidavit that the plaint schedule properties inclusive of its vast extent of 1.65.805 Acres originally belonged to one Podiyan Nadar. On 21.10.1961 the said Poliyar Nadar executed a settlement deed No.6659/1961 by dividing the entire said are of 1.65.805 Acre as 18 plots. After that, as per the said partition deed except plot Nos.14 and 9, remaining 16 plots were allotted among the four sons of Podiyan Nadar namely (1) Kumaraswamy Nadar, (2) Kolappan Nadar, (3) Ramayan Nadar and (4) Chellappan Nadar. The reserved plot No.14 has been sold for valid consideration on the same date under deed No.6675/1961 to one Ponnu Nadathi. The petitioner further states that on 15.07.2013 the said Ponnu Nadathi sold her property to petitioners/plaintiffs under a sale deed No.1733/2013 which is described as plaint 'A' schedule property.

(ii) The petitioners/plaintiffs further state that the plot No.9 having an extent of 1.650 cents were referred deed No.6659/1961 and 6675/1961 is plaint 'B' schedule property. The plaint 'B' schedule property runs from southern panchayat road to northern stream and also it is a pretty old pathway to 'A' schedule ever since the date of the referred partition deed and settlement deed dated 21.10.1961 and sale deed

dated 19.07.2013 respectively. The petitioners have been using the 'B' schedule pathway to plaint 'A' schedule property from 15.07.2013 and the petitioners' vendor's usage from 21.10.1961 without any interruption or obstruction till 07.10.2020 peacefully.

(iii) The petitioners/plaintiffs further stated that the husband of the 1st petitioner expired on 18.09.2020. The 1st petitioner went to her daughter's home. The advantage of the absence of the petitioners, the respondents erected compound wall, barbed wire fence and house foundation on 07.10.2020 encroaching upon the north and southern side of suit 'B' schedule property. The petitioner/plaintiffs have lodged a police complaint on the date itself, but no action was taken. The petitioners' land locked and unable to access into the suit 'A' schedule property. In this circumstances, to appointment an Advocate Commissioner is necessary to this suit, hence this petition is filed for appointment of advocate commissioner.

(iv) The 1st and 2nd respondents/1st and 2nd defendants stated in their counter statement that the document deed No.6659/1961 referred in the petition is not a partition deed it is a settlement deed and document No.6675/1961 conveys right to the vendee in respect of plot No.14 only and no right concerning plot No.9 at all. They further stated that there is no property as plot No.9 in 1961 on subsequent thereto till date and the plot No.9 is not a pathway and it was provided in settlement deed for Kathakatha purpose. These petitioners/plaintiffs did not use the alleged 'B'

schedule property as pathway at any time and there is no property as 'B' schedule property and also it was not encroached upon as alleged.

(v) The 1st and 2nd respondents further stated that the plot No.9 remained together with the property of these defendants as a single plot. No compound wall was built a new and no new barbed wire fence was put up. The compound wall was constructed about 10 years ago and the foundation of their house for purpose of availing the help of the Government for the construction of a new house. The 3rd and 4th respondents are the vendees of the 2nd defendant in respect of 3.035 cents of property, which is a portion of property bearing 7.500 cents which includes plot No.10, 15 and 9 which lie together as a single property. There is no property as 'B' schedule property on the site 'A' schedule property is not described correctly.

(vi) The 3rd and 4th respondents/defendants stated that in their counter statement, the said pathway referred in the petition plot No.9 is no way connected with the suit properties. The petitioners/plaintiffs had intentionally scheduled the plot No.9 as pathway with ulterior motive. The petitioners and their vendor using only the southern panchayat road as an access to their property. The 3rd and 4th respondents/defendants further stated that the said pathway is a clear cut pathway and is still in existence. The petitioners/plaintiffs and their vendor never used the northern pathway by the side of the Odai to reach the 'A' schedule property. The petitioner had suppressed the existence of southern pathway and filed the suit by

suppressed the true facts. The 3rd and 4th respondents/defendants never made any construction or obstruction in the suit 'B' schedule property on 07.10.2010.

(vii) The 3rd and 4th respondents/defendants further stated that in the year 2012, the 3rd and 4th respondents/defendants had purchased 3.350 cents in Re.Sy.No.147/6 from the 2nd respondent/defendant for valid consideration. The property purchased by these respondents are distinct and definite having boundary stones and old barbed wire fences at the spot. This property was a rubber garden. After that these respondents cut and removed the old trees and planted rubber saplings. The 3rd and 4th respondents/defendants further stated that after mutation they are paying revenue taxes in their favour and is in possession and enjoyment of the same as absolute owner. The petitioners have no right over the property purchased by these respondents.

(viii) In the above said circumstances, this court feels that to solve the dispute between the parties regarding plaint 'B' schedule property to find out that whether a compound wall, wire fence and house foundation constructed by respondents/defendants by encroaching the 'A' schedule property an appointing and advocate commissioner is just and necessary. If an advocate commissioner is appointed then the advocate commissioner go to the spot along with surveyor and to take measurement of the suit schedule property and note the physical features and then prepared report and plan then only this court come to conclusion that whether

there is any construction over the suit schedule property or not? and moreover it is very useful to dispose the case effectively, hence this court is inclined to allow this petition.

7. DECISION:

In the result, Miss.Binukumari (Advocate) is appointed as an advocate commissioner. Her remuneration is fixed as Rs.6,500/-. The same shall be paid by the petitioner on or before 08.09.2022. The commissioner is directed to visit the suit property along with Taluk Surveyor after due notice to both parties and submit a detailed report with plan by 30.09.2022. Call on 30.09.2022.

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 10th day of August, 2022.

Additional District Munsif (FAC),
Padmanabhapuram.

ADMC, Padmanabhapuram.

I.A.No.02/2020 in O.S.No.92/2020

Draft/Fair Order:

Dt: 10.08.2022.