

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF
PADMANABHAPURAM.

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

Thursday, the 11th day of August 2022

I.A No.01 of 2022
in
O.S No.26 of 2022

Majish

.. Petitioner/Plaintiff

/ Vs. /

1. Jeyasakthivelan
2. Sivapriya

.. Respondents/Defendants

This petition is coming before me for final hearing, in the presence of Mr.T.Robert Singh, learned counsel for the petitioner and Mr.M.Beslin Jagadheese, learned counsel for the respondents. Upon hearing the counsel on 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 26 Rule 9 and Section 151 of Civil procedure Code to appoint an Advocate Commissioner.

2. THE AVERMENTS IN THE PETITION IN BRIEF :-

The suit 'A' schedule property is having an extent of 10.500 cents bearing Door No.24/49 in new Re-Survey No.379/8A1A1 and suit 'B' schedule property is having an extent of 4 cent in new Re-Survey No.379/8A1A1 are situated in Thiruvithancode Village. The respondents came on 31.01.2022 along with servants and workmen and attempted to build the house by digging a hole in the wall of the petitioner and erecting concrete pillars. The petitioner's father namely Mohan, lodged a complaint at Iranial Police Station and stopped the work. The above said police officials investigated. At the end of the investigation, the Assistant Inspector advised to approach the court and seek relief as this is civil in nature. The defendants are constructing the building illegally without obtaining any permission. In this circumstances, to appointment an Advocate Commissioner is necessary to this suit. Otherwise the petitioner will be put to irreparable loss and hardship. Hence this petition.

3. THE RESPONDENTS/DEFENDANTS FILED WRITTEN STATEMENT ADOPTED AS COUNTER STATEMENT IS AS FOLLOWS :-

The plaint 'A' schedule property originally belonged to one Varuvel S/o.Devasahayam Nadar. The plaintiff's mother Mrs.Suseela purchased the plaint 'A' schedule property from the said Varuvel on 08.11.2015. After purchasing the plaint 'A' schedule property, the plaintiff's mother Mrs.Suseela constructed a house bearing

Door No.24/49 of Thiruvithancode Panchayath. She is having an absolute title, possession and enjoyment over the plaint 'A' schedule property. On 24.04.2021 plaintiff's mother executed a settlement deed infavour of plaintiff bequeathing plaint 'A' schedule property to the plaintiff. The boundary of the plaint A schedule property as the plaintiff has no right over the compound wall. Plaint 'B' schedule property is situated on the northern side of the plaint 'A' schedule property. In between the plaint 'A & B' schedule properties, there was a compound wall situated which demarcated plaint 'A & B' schedule properties. The above compound wall belongs to the defendants. The defendants purchased plaint 'B' schedule property from one Ramani, W/o.Ayyappan Asari by way of sale deed as document No.4587/2013. The defendants obtained approval on 10.01.2022 for constructing building from proper Panchayath Authorities. The plaintiff is illegally claiming the compound wall having no valid documents. The plaintiff is failed to array the Panchayath authorities as party in this suit, hence, this petition is bad for non joinder of necessary party and this petition is liable to be dismissed with cost.

4. POINTS FOR DETERMINATION :-

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

5. DISCUSSION AND ANALYSIS :-

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

(i) The petitioner/plaintiff states in the affidavit that the plaint 'A' schedule property

is having an extent of 10.500 cents bearing Door No.24/49 in new Re-Survey No.379/8A1A1 and suit 'B' schedule property is having an extent of 4 cent in new Re-Survey No.379/8A1A1 are situated in Thiruvithancode Village. On 31.01.2022 the respondents came alongwith their servants and workmen and attempted to build the house by digging a hole in the wall of the petitioner and erecting concrete pillars. Then the petitioner's father namely Mohan, lodged a complaint at Iranial Police Station and stopped the work. After the said police officials investigated.

(ii) Further the petitioner/plaintiff stated that at the end of the investigation, the Assistant Inspector advised to approach the court and seek relief as this is civil in nature. The defendants are constructing the building illegally without obtaining any permission. In this circumstances, to appointment an Advocate Commissioner is necessary to this suit. Otherwise the petitioner will be put to irreparable loss and hardship. Hence this petition.

(iii) The respondent stated in their counter/written statement that the plaint 'A' schedule property originally belonged to one Varuvel S/o.Devasahayam Nadar. The plaintiff's mother Mrs.Suseela purchased the plaint 'A' schedule property from the said Varuvel on 08.11.2015. After purchasing the plaint 'A' schedule property, the petitioner's/plaintiff's mother Mrs.Suseela constructed a house bearing Door No.24/49 of Thiruvithancode Panchayath. She is having an absolute title, possession and enjoyment over the plaint 'A' schedule property.

(iv) Further the respondents/defendants stated that on 24.04.2021 the petitioner's/plaintiff's mother executed a settlement deed infavour of petitioner/plaintiff bequeathing plaint 'A' schedule property to the petitioner/plaintiff. The boundary of the plaint 'A' schedule property as the plaintiff has no right over the compound wall. The Plaint 'B' schedule property is situated on the northern side of the plaint 'A' schedule property. In between the plaint 'A & B' schedule properties, there was a compound wall situated which demarcated plaint 'A & B' schedule properties and the compound wall also belongs to the respondents/defendants. The respondents/defendants purchased plaint 'B' schedule property from one Ramani, W/o.Ayyappan Asari by way of sale deed as document No.4587/2013. Afterthat the respondents/defendants obtained approval on 10.01.2022 for constructing building from proper Panchayath Authorities. The plaintiff is illegally claiming the compound wall having no valid documents.

(v) In the light of discussion made supra, the petitioner/plaintiff seeks a remedy of permanent injunction and mandatory injunction over 'B' schedule property, hence it is just and necessary to appointment of an advocate commissioner to note the physical features of suit schedule properties to find out whether there is any construction made over the suit 'B' schedule property or not and after getting report and plan then only this court can dispose the case effectively, hence this court is inclined to allow this petition.

6. DECISION:

In the result, Mr.V.J.Shibu Ram (Advocate) is appointed as an advocate commissioner. His 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 11th day of August, 2022.

Additional District Munsif (FAC),
Padmanabhapuram.

ADMC, Padmanabhapuram.

I.A.No.01/2022 in O.S.No.26/2022

Draft/Fair Order:

Dt: 11.08.2022.