

In the Court of the Additional District Munsif, Padmanabhapuram.

Present: **Selvi.V.Viswatha, B.A.,LL.B(Hons),LL.M.,**
Additional District Munsif.

Thursday the 01st day of April 2021

I.A No.3 of 2019 in O.S No.90 of 2019

Pushparani.

.. Petitioner/Defendant...

/ Vs. /

Chithra.

..Respondent/Plaintiff.

This petition is presented before me for final hearing, in presence of Thiru.K.Chellappan, learned counsel for the Petitioner and Thiru.J.Jin Jefrin Jose, learned counsel for the Respondent. Upon hearing the counsels 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. Brief of petition facts is as follows:-

The Petitioner herein is the defendant in the suit. The suit is filed against the petitioner to restrain them from trespassing into the plaint schedule property and from committing damages in the plaint schedule property. The petitioner stated that the property in Re.Sy.No.261/16 for an extent of 2 ½ cents belongs to the husband of the petitioner. It is stated that the plaint schedule property is used as pathway to reach the house of the petitioner's husband. It is also stated that the electric line through iron

post is given through the schedule of property. Further it is stated that on 27.12.2018 the respondent's husband and other persons tried to remove the electric post in the plaint schedule property and attempted to close the age old pathway existing through the schedule of property. It is stated that existence of age old pathway through the schedule property and drawing of power line to the petitioner's husband house and erecting of two pillars in the schedule property has to be ascertained. Hence the petitioner states that issue of commission is highly necessary. Thus this petition is filed to appoint an Advocate Commissioner.

3. Counter filed by the respondent/plaintiff in brief:-

The respondent states that the property in Re.Sy.No.261/14 belongs to her. It is stated that the plaint schedule property is not a pathway. It is stated that the petitioner/defendant has trespassed the property and also stated that service connection is not going through the suit schedule property. Further the respondent states that the suit schedule property was purchased on 30.03.2010 and from that the property is used without any interruption. Thus the respondent states that the petition is ought to be dismissed.

4. Heard the counsel on both sides and perused the records stood over for consideration.

5. Now the point for consideration is whether the petition is liable to be allowed or not?

6. On perusal it is seen that the petitioner/defendant has filed this petition stating that the plaint schedule property is used as a pathway to reach the petitioner's

husband house situated in Re.Sy.No.261/16. Whereas the suit is filed by the respondent/plaintiff stating that the suit schedule property i.e. property in Re.Sy.No.261/14 belongs to the respondent and the relief of permanent injunction is sought to restrain the petitioner from committing waste and to restrain them from trespassing into the suit schedule property. The main issue that has to be resolved is whether the plaintiff is entitled for permanent injunction as sought for. The respondent herein resists the petition by stating that the suit schedule property is not used as a pathway and electric connection is not given through the suit schedule property. In short, this is a simple case of permanent injunction where the respondent/plaintiff states that they have title and possession over the suit schedule property and to restrain the petitioner/defendant this suit is filed. Now the petitioner/defendant has come up with this petition to appoint advocate commissioner stating that the suit schedule property is a pathway and it is used to reach the petitioner's house from time immemorial. However, the petitioner/defendant without claiming any sought of right over the suit schedule property this petition is beyond the scope of issue to be resolved. Further, no contention is raised by the petitioner/defendant with regard to their right over the suit schedule property apart from usage. That being so, the present petition is a clear abuse of process of law and also amounts to collection of evidence. Thus this court is constrained to hold that this petition is devoid of legal merits.

7. In the result, this petition is dismissed. No costs.

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Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 01st day of April 2021.

Additional District Munsif,
Padmanabhapuram.

ADMC Padmanabhapuram.
IA.No.3/19 in OS.No.90/2019.
Draft/Fair Order:
Dt: 01.04.2021.