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In the Court of Principal District Munsif, Padmanabhapuram.

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

Principal District Munsif.(Full Additional Charge)

Thursday the 31st day of March 2022

I.A. No.02 of 2020 in O.S. No.133 of 2020

1. Manikandan.

2. Kumari.

..Petitioners/Plaintiffs ..

/ Vs. /

1. Antony.

2. The Assistant General Manager,
NWPS, Nagercoil.

3. The General Manager,
NWPS, BSNL, Nagercoil.

.. Respondents/Defendants ..

This petition is presented before me for final hearing, in presence of Mr.K.Gopakumar, learned counsel for the petitioners and Mr.S.Anto Cletus Raj, learned counsel for the 1st respondent and the respondents 2 and 3 are set exparte. Upon hearing the counsels for 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. Brief of petition facts is as follows:-

The petitioners/plaintiffs states that the suit is filed for Permanent Injunction. It is stated that the petitioners are husband and wife. It is stated that they are the owners of plaint schedule property having an extent of 6 cents and 177 square links comprised in Re.Sy.No.154/13A2 of Attoor Village. It is stated that the petitioner had purchased the suit property from one Jony Joseph, who is the brother of 1st defendant. It is stated

that the said Jony Joseph was the title holder of plaint schedule property before the sale deed in favour of petitioners. It is stated that the adjacent property comprised in Re.Sy.No.154/13A3 of Attoor village belongs to the 1st defendant. It is stated that at the time of sale of the property there were buildings and portion of BSNL Tower in the property purchased by petitioner. It is stated that the petitioners' seller had agreed to dismantle the buildings after the sale deed since tenants are there with godown constructed by them. The 1st defendant along with petitioners' vendor had stated that the tower base comes in the property purchased by the petitioner and they have agreed to collect rent after 2 years. It is stated that in the meantime, the 1st defendant had made a barred wire fence encroaching portion of Re.Sy.No.154/13A2. It is stated that the petitioner have filed a complaint before Thiruvattar Police Station and the matter was pending. It is stated that after influencing the Police the 1st defendant had removed the wire fence and put up compound wall. It is stated that the intention of defendant is to collect the entire rent amount from the BSNL authorities on the guise of giving place for constructing BSNL tower in Re.Sy.No.154/13A3. It is stated that the petitioners are entitled to get rent for the portions occupied in petitioners' land by BSNL authorities as mesne profits. It is stated that the BSNL authorities with a view to help the 1st defendant had stated that they got into an agreement from the 1st defendant to the effect that they are having the right to be there for 12 years from the date of agreement on 16.07.2017. It is stated that the BSNL is not ready to settle the matter amicably and tried to made construction encircling the BSNL tower. It is stated that the petitioner had sent a notice on 02.12.2020. The petitioners states that it

is highly necessary to appoint an Advocate commissioner hence this petition is filed.

3. Counter filed adopted written statement of 1st Respondent in brief:-

The respondent/defendant states that the petitioners are the owner of the plaint schedule property comprised in Resurvey No.154/13A2 of Attoor village. It is stated that the right devolved upon the petitioners by way of Sale Deed No.1333/2018, dated 25.01.2018 executed by the 1st respondent brother is not a trustworthy document in respect of the extent of land. It is stated that based on such document the petitioners set up false claims. It is stated that the plaint schedule property was leased out to one Raju by Jonny Joseph for doing hardware business is against fact and truth. It is stated that the Telephone tower rent can be collected by the petitioners situated in Resurvey No.154/13A2 after two years which expires on 15.07.2020 is a spurious claim without any merits. It is stated that the plaint schedule property and other property originally belonged to Joseph who is the father of the 1st respondent. It is stated that in the year 1997, the plaint schedule property and more extent was partitioned between the 1st respondent and his brother which got registered as Document No.35/1997 dated 07.01.1997 on the file of S.R.O Verkilampi. It is stated that the said partition deed A schedule property was allotted to his brother and B schedule property was allotted to 1st respondent. It is stated that the plaint schedule property was allotted as item No.1 to his brother viz. Jonny Joseph comprised in Resurvey No.154/13A measuring to an extent of 7 cents and the 1st respondent was allotted with item No.1 as B schedule comprised in Resurvey No.154/13B to an extent of 9 cents. It is stated that after partition in the month of May 1997 an

understanding was arrived between the brothers in the presence of family elders whereby the property comprised in Resurvey No.154/13A was proportionately divided into two divisions apart from the area and measurements described in the partition deed. It is stated that the said Jonny Joseph was allotted with an extent of 5.880 cents on the western side and the 1st defendant was allotted with an extent of 6.880 cents on the eastern side and both had taken independent separate possession and enjoyment of the above mentioned areas without any demur or protest. It is stated that in the month of June 1997, the 1st respondent constructed compound wall on the western side separating the property of Jonny Joseph and enjoying without any hindrance. It is stated that the 1st defendant entered into an agreement with the respondents 2 & 3 for erecting a BSNL Mobile Tower in his property and monthly rents being remitted in the 1st respondent account. It is stated that from the date of agreement the BSNL Mobile Tower is situated in Re.Sy.No.154/13A3 of Attoor Village and not in Resurvey No.154/13A2. It is stated that the property of the 1st respondent is bounded with compound walls on the western side and the BSNL Mobile Tower is situated in Resurvey No.154/13A3. It is stated that the claim of the petitioners that some portions of the BSNL Mobile Tower extended in Resurvey No.154/13A2 has to be removed by the respondents as the petitioners or his predecessors in title are not party to the agreement doesn't arise in this case. It is stated that the 1st respondent and the respondents 2 & 3 is valid agreement and still inforce. It is stated that the petitioners are not entitled to claim mesne profits and recover any damages from the respondents. It is stated that the petitioners have no

cause of action to file this suit. Hence this petition is liable 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 has to be allowed or not?

6. The petitioner/plaintiff states that the suit is filed for permanent injunction. It is stated that the petitioners are husband and wife and they are the owners of the plaint schedule property having an extent of 6 cents and 174 square links in Re.Sy.No.154/13A2 of Attoor Village. It is stated that adjacent property belongs to 1st defendant and at that time of sale the property there were building and portion of BSNL Tower in the property purchased by the petitioner. The petitioner states that the 1st respondent has made a wire fence encroaching the Re.Sy.No.154/13A2. The petitioner states that the intention of the respondent is to get the portion occupied by BSNL Tower in the petitioner property by virtue of an agreement extend by the 1st defendant with the BSNL authorities. Hence the petitioner states that appointment of Advocate Commissioner is highly necessary. Resisting the same the respondent states that from the date of agreement BSNL Mobile Tower is situated in Re.Sy.No.154/13A3 of Attoor Village and not in Re.Sy.No.154/13A2. The counsel for the petitioner argued that the encroachment is made by the petitioner and states that to note down the compound wall constructed by the 3rd respondent, the encroachment made by the BSNL Tower in plaint schedule property and note down the symptoms of demolition of construction and to note down the old compound wall on the northern side of the plaint schedule property and the construction in

Re.Sy.No.154/13A2 of Attoor Village is highly necessary.

7. Resisting the same the counsel for the respondent states that the suit is filed for permanent injunction and to prove the same if the Advocate Commissioner is appointed it amounts to collection of evidence.

8. On perusal of records it is seen that the suit is filed by the petitioner seeking the relief of permanent injunction. The petitioner states that the portion of BSNL Mobile Tower is available with the property belonging to the petitioner and states that the 1st respondent is trying to receive the rental amount from the BSNL. However on perusals of the petition it is seen that the petitioner has stated various points to be noted down by the petitioner. However this being the suit for permanent injunction the petitioner has to prove the lawful possession and violation to the lawful possession independently with available records. Noting down the physical features of the property, this present case amounts to collection of evidence the same can be proved otherwise. In the light of the discussion made supra, this court decides to dismiss this petition.

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

Dictated to the Steno-Typist directly, typed by her in computer, corrected and pronounced by me in open court, on this 31st day of March 2022.

Principal District Munsif,(FAC)
Padmanabhapuram.

PDMC, Padmanabhapuram.
I.A.No.2/2020 in O.S.No.133/2020
Draft/Fair Order:
Dt: 31.03.2022.