

In the Court of the Principal District Judge,
Principal District Court , Kancheepuram.

PRESENT: Thiru.Pa.U.Chemmal,M.A.,LL.M.,
Principal District Judge,
Principal District Court,
Kancheepuram.

This Thursday the 24th day of October 2024

IA.No.2/2024 in O.S. No.219/2024

N. Kothai

--- Petitioner/Plaintiff.

//vs//

1. A. Rajasekar
 2. P. Kesavan
 3. K. Narend
 4. K. Ganesh
 5. The Managing Director
Indian Bank, Royapettah,
Chennai
 6. The Manager,
Indin Bank,
Pookadai Chathiram Branch,
Kancheepuram.
 7. The Sub Registrar Joint-I
Kancheepuram
 8. The District Registrar
Kancheepuram District.
 9. The Commissioner,
Kancheepuram City Municipal Corporation,
Kancheepuram District.
 10. The District Collector,
Kancheepuram District
- .. Respondents/Defendants.

This petition is coming on this day 24.09.2024 for final hearing before me in the presence of M/s.V. Janarthanan, R. Vijaya Kumar, V. Pandiyan, Counsels appearing for the petitioner / Plaintiff, M/s. R. Abdhul Hakim, Counsels appearing for the respondent2 1 and 2, and M/s. L. Sowmiya Narayanan, S.V. Raja, E. Sehu, V. Parthiban, Counsel appearing for respondents 3 and 4, Thiru.A.K. Ramesh, Government Pleader for Respondent7, 8, 9 & 10 and Respondents 5,6 and 9 being called absent set ex parte and upon hearing the arguments of both side and upon perusal of records and having stood over for my consideration till this day, this court delivered the following

ORDER

This petition is filed by the petitioner under Order 26 Rule 9 of CPC. to appoint an Advocate commissioner to make site inspection and to identify the boundaries of the parent documents of the petitioner as well as parent document of the 1st respondent vendor with assistance of the revenue official's and registration department officials.

2) The averments found in the affidavit of the petitioner in brief are as follows:

The petitioner is the plaintiff herein in the above suit and the petitioner is well acquainted with the facts of the case.

The petitioner is an absolute owner of the suit schedule property and this property originally owned by Thiru.Krishnaswamy Mudaliar he is the petitioner maternal grandfather, transfer through his family partition deed and the same was registered as Document No.1417 of 1918 dated 25.03.1918 totally measuring 3.5 acres of land in the old Survey No.13. Thereafter Krishnaswamy Mudaliar executed a sale deed in favour of C.K.Duraisamy Mudaliar and the same was registered as Document No.2279 of 1936 dated 17.03.1936 for 20 cents in part of 3.5 acres of land in the old Survey No.13, with clear boundaries of the suit schedule property, The East of the side Second Middle Street, South of Venugopal Vacant Land, West of the petitioner's remaining Vacant Land, North of Arcot Road, (Now it is called as Vellore Road).

The legal heirs of the C.K.Duraisamy Mudaliar filed TOS No.4 of 1939 before the Hon'ble High Court of Madras. The Hon'ble Court directed the official trustee of Madras to conduct Public auction for the suit schedule property, and the same was purchased by Mr.H.M.Abdul

Kadar in the public auction conducted by the official trustee of Madras and the same was registered as Document No.41/1946 dated 22.12.1946 with clear Boundaries of the suit schedule property Eastern side of Munusamy Mudaliar House, West of Lalithabai Ammal Land bearing Survey No.8/2, North of Vellore Road, South of Venugopal Land bearing Survey No.13.5 and he became the owner of the suit schedule property. Thereafter he was in possession and enjoyment of the suit schedule property, after demise of the said H.M.Abdul Kadar his legal heirs had been in possession until the execution of the sale deed in her favour.

The legal heir of the Krishnaswamy Mudaliar is one Lakshminarayanan filed a suit in O.S.1081 of 1985 before the District Munsif Court Kancheepuram during the pendency of the suit he was died, after his death legal heirs was impleaded as a party in the suit and same was decreed in their favour on 30.08.1990. Subsequently the legal heirs of Lakshminarayanan executed a sale deed for the suit schedule property in the petitioner favour and the same was registered as Document No.525 of 1993 dated 20.05.1993 before the 7th Respondent on the same another one of the legal heir of Krishnaswamy Mudaliar, son Narasimman also executed a sale deed for the suit schedule property in her favour and the

same was registered as Document No.542 of 1993 dated 20.05.1993 before the 7th respondent.

The legal heirs of H.M.Abdul Kadar, i.e., A.N.Pailur Rahman and others executed a sale deed in her favour and the same was registered as Document No.1367 of 2005 dated 30.08.2005 before 7th respondent in Survey No.13/1, New Survey No.13/1AC (Old Survey No.13) and Door No.48 (old Door No.47 and 48) in Town Survey No.17,18 and measuring an extent of 8510 Sq.ft. Nearly 0.20 cents situated at No.23, Netteri Village, Kancheepuram Taluk, Kancheepuram District. The boundaries of the suit schedule property are North:Ajab Sahib Land, South; Vellore Road,East:EB Central Store compound, West:Venugopal Mudaliar Street.

All revenue records and electricity connection was transferred in the name of herself and the petitioner has peaceful possession thereafter the petitioner has let out the suit schedule property for rent, to Mr.B.Chandrasekaran he was running raw wood shop still the year of 2014.

Krishnaswamy Mudaliar executed a sale deed in favour of his daughter Lalitha Bai (She is the mother of herself) registered as Document No.6495 of 1942 dated 17.11.1942 in survey No.13 Punja Land and measuring an extent of 0.18 1/2 cents with a clear Boundaries. The West

side of Kullappa Naidu Street, The North of Deivanani Ammal House, The East of survey No.15 and 16, The South of Venugopal Vacant Land and these boundaries are totally differed from the suit schedule property.

The above said Lalitha bai executed a sale deed in favour of the 1st respondent same was registered as a Doc.no.3748/2011 dated 23.09.2011 based on the parent document No.6495 of 1942 without mentioning the boundaries in the sale deed, even though the boundaries are clearly mentioned in the parent document of Lalitha bai and extent of land in the parent document is only 18.5 cents but in sale deed of 1st respondent, it was mentioned as 20 cents.

After the sale deed of Doc.No.3748/2011, the 1st respondent came to the suit schedule property and threatened her tenant to vacate the said premises. Thereafter the petitioner was made a complaint to the Superintendent of Police, Kancheepuram on 12.03.2012, it was forwarded to the Deputy Superintendent of Police, Land Grabbing Cell, Kancheepuram and police official issued summons to the 1st respondent for enquiry and he appeared on 30.03.2012 and gave undertaking statement that he will resolve this issue through the civil court.

The 1st respondent has created false and vexatious civil suit for permanent injunction without any genuine cause of action, title deed and

without possession, filed a suit before the Subordinate Court, Kancheepuram in OS.No.221 of 2012 dated 17.10.2012 against herself and her tenant B.Chandrasekaran and he was not appeared before the Hon'ble Court and same was dismissed for non-prosecution on 06.01.2020.

The 1st respondent filed a suit in O.S.No.221 of 2012 while the suit is pending, he suppressed the suit and with mala fide intention made a representation before the Revenue Divisional Officer at Kancheepuram to cancel her patta of the suit schedule property, subsequently the revenue official issued summons to her to produce the original document and conducted enquiry on 28.10.2013. The Petitioner has produced all genuine documents before the revenue official. Thereafter the Revenue Divisional Officer without verifying the parent documents, passed an order to cancel her patta, meanwhile he made a direction to Tahsildar, to transfer all revenue records of the suit schedule property in the name of 1st respondent dated 02.05.2014.

Without any interim order the 1st respondent came along with more than 20 political persons and trespassed in the suit schedule property threatened and forcibly evicted her tenant, from the suit schedule property. Immediately the petitioner made a complaint before Baluchettychatram

Police Station on 25.06.2014, CSR No.210 of 2014 against the 1st respondent.

Subsequently the petitioner had filed original suit in O.S.No.211 of 2014 against 1st respondent before Subordinate Judge at Kancheepuram for permanent injunction not to interfere with her peaceful possession and enjoyment and the petitioner have filed impleading application in I.A.No.258 of 2021 to implead the subsequent purchasers i.e. 3rd and 4th respondents and same was ordered notice it was still pending.

The petitioner have filed appeal before District Revenue Officer against the order of Revenue Divisional Officer dated 02.05.2014 in that appeal District Revenue Officer admitted in his proceedings that, both the property of Lalitha bai and property of Kothai (petitioner) are differ from each other, even though District Revenue Officer conformed the earlier order of the Revenue Divisional Officer dated 16.02.2018.

Even though the 1st respondent has filed suit against petitioner in O.S.No.221 of 2012 and the petitioner have filed suit against the 1st respondent herein in O.S.No.211 of 2014 during pendency of two original suit at this juncture,the 1st respondent deliberately incorporate the boundaries of her suit schedule property in the power of attorney executed in favour of the 2nd respondent and the same was registered as document

No.Doc No.3556/2015 dated 23.12.2015 before the 7th respondent and this transactions was not known to herself.

The 1st and 2nd respondent were continuously attempting to create encumbrance of the suit schedule property without any lawful justification on which eventually leads to the invalidation of the suit schedule property. Thereafter, further the petitioner made objection letter to the 7th respondent on 01.12.2020 in non-judicial stamp paper and the same was accepted and 7th respondent issued the receipt No.5183/2020.

The 2nd respondent has executed sale deed in favour of 3rd and 4th respondents and same was registered as document Doc.No.1669/2021 dated 14.06.2021 at the 7th respondent office, only based on the power of attorney executed by the 1st respondent to the 2nd respondent, at time the 7th respondent failed to verifying the parent documents at the time of registration.

The 3rd and 4th respondents within the three days from the sale deed was executed in their favour, they approached and connivance the bank official in a deceitful manner, through forged documents of the suit schedule property including title deeds of collateral securities , suppressed the legal issues pending before the court and obtaining loan for an amount of Rs.1,05,00,000/- (Rupees one Crore and Five Lakhs only) form the 6th

respondent bank and memorandum of Deposit of Title Deeds was registered on 17.06.2021 as document No.1739 of 2021 before the 7th respondent. The 6th respondent failed to verify the parent documents of the title and sanctioned loan to the 3rd and 4th respondent. Thereafter the petitioner have sent objection letter regarding litigation in the suit schedule property to the bank officials dated on 01.07.2021.

Immediately the petitioner made representation to the District Registrar Kanchipuram on 05.07.2021, the enquiry was conducted and verified the previous records and based on the report of the 7th respondent dated 23.08.2021, The District Registrar, Kanchipuram came to the conclusion and passed an order on 28.01.2022 with the direction to the 7th respondent to incorporate the document Nos.3748 of 2011, 3556 of 1015 and 1661 of 2021 as fraudulent due of false statements/ presentation in the encumbrance.

The 3rd and 4th respondents suppressed all the litigation about the suit scheduled property and obtained building planning permission from the 9th respondent and illegally taken the possession and they have started the commercial building construction, in the suit property. Thereafter, the petitioner have sent objection letter to the 9th respondent

and Town Planning Officer, Kanchipuram regarding the litigation of the suit scheduled property dated 09.12.2021.

The petitioner have filed a writ petition before the Hon'ble High Court at Madras in WP.no.4338 of 2022 against the order of District Revenue officer dated 16.02.2018 and the Hon'ble High Court also granted interim injunction restraining the respondents 1 to 4 from altering the physical features of the suit scheduled property and the writ petition is still pending before the Hon'ble High Court.

The 3rd and 4th respondents filed an appeal before the Deputy Inspector General of Registration, Chennai against the order passed by the District Registrar, Kanchipuram Dated 28.01.2022. In the appeal, the District Registrar, Kanchipuram order was set-aside and directed both the parties to approach the civil court for appropriate relief.

The 3rd and 4th respondents herein have filed suit in OS.No.135 of 2021 for declaration and permanent injunction for suit schedule property against herself, her husband P.Natarajan, her Daughter Preetha and her son N.Jagadeesan before the District Court, Kanchipuram and the same was still pending.

The petitioner was not a party in the transaction of power of attorney between the 1st and 2nd respondents and also the petitioner was not

a party in sale deed of the 3rd and 4th respondents and also the petitioner was not a party in the memorandum of title deposit of 6th respondent, entire title transaction between the respondents was fraudulently included her suit schedule property. The total transfer of the suit schedule property by unauthorized person who subsequently acquires interest in the property transferred.

The respondents 1 to 4 by way of fraudulent and forgery colluded between them had obtained loan and same was taken by him and also obtained sale without the knowledge of herself taking incident of herself and the petitioner have no other option except to file the above suit for a declaration and recovery of possession of the property. The documents are sham and nominal, fraudulent, false statement and presentation before the 7th respondent hence those power of attorney, sale deeds, memorandum of deposit of title deeds are unenforceable in the eye of law and liable to be declared as null and void.

The revenue official and 8th defendant admitted that her property and the 1st respondent vendor property is differ from each other, eventhough the respondents 1st to 4th are disputing the boundary of the suit schedule property, therefore this court may be please to appointment an advocate commissioner to inspect the disputed both property and looking

to the found in the documents of the parent documents Nos.2279/1936, 6495/1942,41/1946 and the respondent 1st to 4th with assist of the revenue official and official of the registration department.

The 3rd and 4th respondents are trying to put up further constructions and also trying to creating any encumbrance or alienating in the suit schedule property and therefore the petitioner under grave threat and if this is done the petitioner will put to grave hardship and the damage cannot be compensated in terms of money. In this circumstance the petitioner left with no other option but to approach this court for protection of the schedule property from being grabbed. If the respondent is not restrained by way of an interim injunction from putting up further construction in her property the petitioner will be put to grave hardship and the damage cannot be compensated in terms of money.

It is therefore humbly prayed that this court may be pleased to appoint an advocate commissioner to make site inspection and identify the boundaries of the parent documents of herself, as well as parent document of the 1st respondent vender with assistance of the revenue official's and registration department officials and render justice.

3) **Brief averments in the counter filed by the 1st respondent are as follows:**

This respondent denies all the allegations in the affidavit of the petitioner except those that are specifically admitted herein.

It is true that the suit in O.S.No.1081/1985 in the file of Kanchipuram District Munsif Court filed by Lakshmi Narayanan already decreed in this respondent's vendors favour on 30.08.1990. As against the above decree, the said Yusuf Sahib and others filed an appeal in A.S.No.10/1991 on the file of Kanchipuram Sub Court and the said appeal was also dismissed. On this point alone the present suit is barred by resjudicata. It is false to aver that the legal heirs of the Lakshmi Narayanan had executed the sale deed in respect of the schedule property in favour of the petitioner/plaintiff under document No.525/1993 dated 20.05.1993. The allegation that on the same day another one of the legal heirs of Krishnasamy Mudaliar, namely Narashimhan also executed a sale deed in respect of schedule property in favour of the petitioner/plaintiff under document No.524/1993 dated 20.05.1993 is untrue and untenable. The said 2 documents are in respect of some other property belonging to Lakshmi Narayanan which is no way connected with the suit property. It

is glaring attempt by the petitioner/plaintiff to deceive the court, by suppression of fact.

The sale deed executed by the legal heirs of H.M.Abdul Kadhar i.e., A.N.Fazulur Rahman and others under document No.1367/20025 dated 30.08.2005 is an invalid document. The document No.1367/2005 was executed by the different power of attorney holders under power of attorney document No.142/2004 on the file Kanchipuram Joint I Sub Registrar Office. Document No.1411/2004, 1547/2004 and 1548/2004 all are registered on the file of Mylapore Sub Registrar Office. In all the above said power of attorney documents the schedule is T.S.No.13, T.S.No.13/1, R.S.No.13/1AC(old Village S.No.13) but in the sale deed dated 13.08.2005 under document No.1367/2005 is T.S.No.17 and 18. Hence the survey number in the sale deed is entirely different from the survey number in the above 4 power of attorney deeds. Thus the sale deed dated 30.08.2005 is invalid in law. The above suit is clearly barred under order 2 rule 2 of Code of Civil Procedure. In view of an earlier suit in O.S.No.211/2014 on the file of the Principal Sub Judge at Kanchipuram which was filed in respect of the very same cause of action.

It has been simply recited in the sale deed dated 30.08.2005, that they are the legal representatives of deceased H.M.Abdul Khadar. But the

sale deed did not explain in what capacity they are the legal representatives of H.M.Abdul Khadar. No nature of relationship between H.M.Abdul Khadar and the above said 30 vendors were stated in the sale deed. For none of the above said 31 vendors, no legal representatives, certificate has been produced by the petitioner. In the sale deed dated 30.08.2005 in which the petitioner was alleged to have purchased. The suit property, the vendors H.M.Abdul Razaak and H.M.Latheefunnisa were recited to be represented by power of attorney holder H.M.Abdul Khadar through a power of attorney dated 09.07.2004. The said power of attorney is an invalid document. Since the same was not registered as required by section 17(1) of the Indian Registration Act.

Apart from the sale deed dated 30.08.2005, patta never stood in the name of the petitioner nor in the name of the vendors of the petitioner. The petitioner never produced any document to prove her possession or the possession of her vendors. It is an admitted fact that the respondents were in possession and enjoyment of the property, got bank loans for the purpose of putting up construction in the schedule mentioned property and also building has been erected upon the same by their purchaser i.e., K.Narend and K.Ganesh(3rd and 4th respondents respectively).

The brief history of the respondents' title is as follows; Krishnasamy Mudaliar was admittedly the original owner of the property Krishnasamy Mudaliar and Venugopal had partitioned their family properties by means of a registered partition deed document dated 25.03.1918. As one of the item under 'A' Schedule mentioned property has been allotted to the share of Krishnasamy Mudaliar. Thus Krishnasamy Mudaliar became the absolute owner of the property. The said Krishnasamy Mudaliar straight away sold the schedule mentioned property to Lalithabai Ammal by a registered sale deed dated 17.11.1942. Lalithabai Ammal was in possession and enjoyment of the property with patta in her name under patta No.470. Thereafter the respondent had purchased the property from Lalithabai by a registered sale deed dated 23.09.2011. Patta had been issued in favour of the respondent under patta No.983 and the New S.No.17,18 and Old S.No.13/1AC -20 cents. The respondent had given a general power of attorney in favour of the 2nd respondent by a registered general power of attorney deed dated 23.12.2015. From the respondent, the said 3rd respondent and the 4th respondent had purchased the property by a registered sale deed dated 14.06.2021. The said 3rd respondent and the 4th respondent had purchased the property by borrowing a bank loan from Indian Bank, Pookadai Chatiram Branch, Kanchipuram. Even the

bank lawyer had verified all the documents of title and gave a legal opinion regarding the validity of the title of the vendor i.e., the respondent. Thus 3rd respondent and 4th respondent became the absolute owner of the property with patta in their name and they have been in possession and enjoyment of the property.

The family members of the Lalithabai Ammal, namely Lakshminarayanan (who is the brother of Lalithabai Ammal) had filed a suit against one Ibrahim Sahab who encroached upon the schedule mentioned property. the said suit in O.S.No.1031/1979 was a suit for declaration of title and for recovery of possession. The said Lakshminarayanan got possession of the property from Ibrahim Sahib through court by filing E.P. Thereafter some of the legal representatives of H.M.Yusuf Sahib, namely Ibrahim Sahib again trespassed upon the property. The said Lakshminarayanan and other family members of the family filed another suit against Ibrahim Sahib and the legal representatives of H.M.Yusuf Sahib in O.S.No.1081/1985 on the file of Kanchipuram District Munsif Court. In the said suit Lakshminarayanan got possession of the suit property and taken delivery through court. In all the above 2 suits, the schedule mentioned property has been clearly mentioned as S.No.13/1AC of an extent 19 cents. It clearly goes to show

that the family of Lalithabai Ammal had been in absolute possession and enjoyment of the property with patta in her name.

But infact the said O.S.No.52/1996, on the file of Additional District Munsif at Kancheepuram was dismissed. In the said suit in O.S.No.52/1996 the earlier owner Lalithabai Ammal is also one of the defendants. The said suit ended in favour of Lalithabai Ammal since the suit was dismissed. It clearly goes to show that the vendor of the petitioner themselves were not having title to the property. By no stretch of imagination, the petitioner can claim right upon the schedule mentioned property. On this ground alone, the court can conclude that the title and possession did not vest with the petitioner. No patta in favour of the alleged previous owner H.M.Abdul Khadar or the legal representatives were produced by the petitioner.

When a particular extent is fully covered by an exclusive survey number, then boundaries are irrelevant, because the FM sketch of the particular survey number itself is sufficient for perfectly locating the suit property and no boundaries are required. This is a well established proposition of law. The discrepancy of the property by means of boundaries is overcome by the perfectness of the survey number and the extent.

It may be taken note of the Hon'ble Court that the Revenue Division Officer in ந.க.எண்.2041/2013.ஆ2இ நாள்.02.05.2014 who went into the merits of title and possession of this respondent and confirmed patta in his favour. The District Revenue Officer also rejected the appeal filed by the 2nd respondent in his proceedings in ந.க.எண்.13524/2014/எண்.3, நாள்.16.02.2018 . The above Revenue authorities are competent to identify the property.

An earlier suit in O.S.No.221/2012 which was filed by the respondent was dismissed for default on 06.01.2020. Once the vendor respondent had decided to sell away the property he did not take any interest to proceed with the case. A suit dismissed for default is not decree on merits. Thereafter the present owners (K.Narend and K.Ganesh) had filed a suit for declaration and injunction in O.S.No.135/2021 and the same is pending before this court. Likewise the petitioner had filed a suit in O.S.No.211/2014 for injunction . Once the petitioner is not in possession of the property, she cannot file a suit for injunction and the said suit is liable to be dismissed in limini.

It is well settled proposition of law that "An Advocate Commissioner cannot be appointed to find out as to who is in possession of a suit property. Dispute in the suit can be resolved only on the basis of

oral and documentary evidence let by the parties". Hence the petition to appoint an Advocate Commissioner is not valid in law for gathering evidence.

Hence the petition may be dismissed.

4) **Brief averments in the counter filed by 3rd and 4th**

Respondents are as follows:

This respondent denies all the allegations in the petition except those that are specifically admitted herein.

The present petitioner/plaintiff who is the defendant in the suit O.S.No.135/2021 in para No.8 of the writtens tatement as follows:

“ <u>This defendant submits that the said Lalitha Bai Ammal has not purchased the suit property under the said sale deed ddated 17.11.1942 is totally differed from the suit property. Therefore, the said Lalitha Bai who had no manner of any right over the suit property has wrongly mentioned the said schedule of property in the plaintiff’s vendor Rajasekar’s sale deed dated 23.09.2011 and under the guise of the said wrong and false alleged sham and nominal sale deed which is even without boundaries and other particulars the</u>
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<u>plaintiff's vendor was trying to grab the suit property from</u> <u>1st defendant."</u>
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Therefore the petitioner/plaintiff is taking mutually destructive plea. Further, the mentioning of suit number O.S.No. 1081/1985 at Kancheepuram District Munsif Court is relevant to the present dispute.

The sale deed by C.G. Krishnanswami Mudaliar for himself and guardian of Minor Children Lakshmi Narayanan Narashiman, Ramachandran sold the property with following boundaries:-

West by Krishnaswami Mudaliar land;

North by Gopalakrishnan Mudaliar vacant site;

East by Street;

South by Deivanaiammal house.

Measuring an extent of Acre 0.18 (1/2) cents. This document was registered as 6495/1942.

The said Lalitha Bhai sold the same property without mentioning the boundary, but with correct survey number in prior title deeds also. The said Rajasekar, while executing the power of attorney in favour of one Kesavan with specific boundaries. Therefore, the identify of the property sold by Lalitha Bhai is in possession and enjoyment. Curiously, in

affidavit Para No.3 the land of defendant's vendor was shown as boundary. It is an express of admission of this respondent's vendor title. As per para 4 is concerned, the legal heirs of Krishnaswami Mudaliar joined in the sale deed in favour of Lalitha bhai as co-nominee party. Therefore, the title of Lalitha Bhai was not at all disputed by her brothers. The sale deed by legal heirs of Abdul Kadhar in the year 2005 is not all relevant to the present dispute.

The Abdul Kadhar sale deed, in court auction purchase dated 01.08.1945 the schedule of property Lalitha Bhai land was shown but the survey number added as 8/2. From this description only, the petitioner/plaintiff had got a wrong clue and claiming the right over this respondents/defendants property.

As admitted in para No.1, there is no patta for petitioner. Therefore the question of possession will not arise. The second suit is barred under Order 2 Rule 2 of CPC since the first suit O.S.No.211/2014 for bare injunction. The boundary description in the suit cannot be supported by any documents. Initially, the petitioner/plaintiff tried her luck in the District Registrar Office and tasted success. As admitted in para No.22, this respondents had preferred a revision before DIG, Madras and obtained the order of District Registrar reversed. If the allegation in para 20 is a

serious one. The Respondents are in possession and enjoyment. There is no admission by the Revenue officials regarding the identity of the property and their finding is not binding on this court.

There is no prima facie case and a valid equitable mortgage was created and this respondents have constructed building thereon and this respondents are in possession and enjoyment. Therefore the balance of convenience is in favour this respondents only.

The identity of the property is not the dispute. Further, the commission petition is nothing but an attempt to collect evidence. The purpose stated in the affidavit is to identify the boundaries of the present documents of the petitioner and parent document of this respondents which is nothing but a mini trial. The purpose of commission petition is to minimize the oral evidence, not to collect evidence.

The allegation about 1993 sale deed is nothing but a green lie. Even that sale deed was taken as a gospel truth, it is only 4 (1/2) cents with different survey number. Therefore, the petitioner has not come to the court with clean hands. The town survey number in the documents relied by the petitioner is a dubious one and with survey numbers and wrong descriptions. Hence, petition may be dismissed.

4) The point for determination that arose for consideration is

Whether the application to appoint an Advocate commissioner as prayed for in the application is to be allowed or not?

5) **Point:**

Heard both side. The plaintiff has filed the suit for declaration of title and for recovery of possession of the suit property. Admittedly, there is a dispute regarding boundaries and there is an attempt made to alter the physical feature of the property. Therefore, it is necessary for localising the property, it cannot be said that the appoint of Advocate commissioner is for the purpose of collecting evidence in favour of the petitioner. An appointment of Advocate commissioner to inspect the suit property and note down the nature of the suit property cannot be taulted. The appointment of advocate commissioner has sought for by the petitioner in this application by no stretch of imagination cannot be called as an attempt to gather evidence. No prejudice is caused to the respondents/defendant by appointing an Advocvate commissioner. Measurement of property will certainly help this court to take decision whether any encroachment is made as alleged in the application. Suit is for declaration of right, title and interest, dispute as to the measurement of property. Hence, there is no impediment to appoint an Advocate commissioner to ascertain the

measurement of the property. This court is of the opinion that Commissioner report will be assess the proper disposal of cause before this court. This court is satisfied on maerials available on record that the petitioner/plaintiff is not able to produce his side evidence, this court is empower to exercise discretion and order for local investigation. It is the duty casts upon the court to appoint an Advocate commissioner if necessary for proper adjudication of case, especially where there is boundary dispute.

The application for demarcation of land would certainly facilitate an effective and complete adjudation of matter. Demarcation of land in question by implying latest technology would not cause any prejudice to either party and would rather assist in a complete and effective adjudatio of issue.

It is necessary to obtain demarcation to prove encroachment of plaintiffs land by the defendant by way of reliable evidence. Encorachment if any of the plaintiff land by the deendant can be established only by way of demarcation. Therefore, it is necessary to appoint an Advocate commissioner by perusing the petition mentioned documents. The said facts stated in the application facilitates this court in

arriving at a just conclusion in order to dispense justice between the parties.

In this case, the petitioner alleges encroachment and the respondents denied the same then it becomes necessary to appoint an Advocate commissioner, because recitals of documents may not reveal true facts and measuring of land on spot by Taluk Head Surveyor or qualified Surveyor may become necessary.

In order to determine whether there has been any encroachment or dispute in regard to identification of property, it is always desirable to get fields/plots /areas measured by an expert in order to find out exact area encroached upon. Oral evidence cannot be conclusively proved such an issue.

By exercising discretion of this court and this court deems it appropriate that local investigation would be required for resolving the disputes in question. Therefore, to come to a just conclusion that in which survey number lands of respective parties are situated, appointment of an Advocate Commissioner is necessary. Moreover, it does not amount to collection or fishing of evidence. It is always desirable to get suit land or field measured by an expert or competent public official to find out area of suit land encroached upon, more so, when oral evidence cannot help

court when it is in form of words by rival parties. Oral evidence cannot conclusively prove such an issue.

In this case, there is a serious dispute in regard to the boundary and area of property especially with regard to identity of the property, this court feels that no effective decree can be passed without appointment of an Advocate commissioner. In such situation, it is the duty of the court to appoint an Advocate commissioner so as to assist this court in addressing the controversies. No prejudice is to be caused to the defendants and it will go a long way to assist the court to address the controversy between the parties. Therefore, objections raised by the respondents is not in accordance with law and liable to be rejected. In these circumstances, this court deems fit to appoint an Advocate commissioner as prayed for in the application. The point is answered accordingly.

In the result, this petition is allowed. Thiru.K. Gowsik, Advocate is appointed as Advocate commissioner to inspect the suit property with the help of Taluk Head Surveyor and to measure the suit property with the help of parent documents as mentioned in application after giving notice to both the parties and to file his report and plan thereof. A sum of Rs.20,000/- is to be paid by the petitioner directly as his remuneration on or before 25.10.2024. The petitioner is directed to file a memo with

regard to the payment of Advocate fees. Issue Commissioner Warrant after verifying the payment of Commissioner's fees. For commissioner report and plan by 29.10.2024.

//This order has been dictated by me to the Stenographer, taken down, transcribed and typed by her in the computer, corrected and pronounced by me in the open Court on this the Thursday the 24th day of October 2024//

Sd./-Pa.U.Chemmal
Principal District Judge,
Principal District Court
Kanchipuram.

Exhibits and Witnesses on
both side: NIL

Sd./-Pa.U.Chemmal
Principal District Judge,
Principal District Court ,
Kanchipuram.

Draft/Fair Order
I.A.No. 2/2024 in
O.S.No. 219/2024
D.D.24.10.2024
Principal District Court ,
Kanchipuram.

