

**IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM, KANCEEPURAM DISTRICT**

**PRESENT: Tmt.R. Rajeswari,B.Com.,L.L.M.,
Principal District Munsif, Kanchipuram**

On Thursday, this the 4th day of August 2022

IA.No.4 of 2022
In
O.S.No. 85 of 2020

Vasanthi

...Petitioner/Plaintiff

/Versus/

E.Santhanam

...Respondent/Defendant

This petition having coming up on 25.07.2022 for final hearing before me in the presence of Thiru.N.Vinayagam, G.Tamizharasu, A.Balaji, D.Srinivasan and B.Baskar, advocates for the petitioner and Thiru.P.Rajamanikkam, advocate for the respondent and upon hearing the arguments of both sides and upon perusing the connected material records and having stood over till this day for consideration, this court delivers the following:

ORDER

1. This petition is filed under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate/Commissioner to make a local inspection of the suit property with the help of Surveyor and to down the physical features of the suit property and the common Narasam marked as DEFG portion and to submit a detailed report with plan.

2. The case of the petitioner as stated in his affidavit is as follows:-

The Petitioner submitted that originally the entire property measuring East to West 21 feet; North to South 147 feet, comprised in Old S.No.191 in Dhandu Colony, Sevilimedu Village, Kanchipuram Taluk and District, belonged to one Murugan. The said Murugan was in possession and enjoyment as the absolute owner. After the death of Murugan, his sons Pal Manickam, Sinthamani and Ekambaram orally divided the above properties among themselves in the family arrangement in the year 1978 itself. In pursuance of the family arrangement, the front portion should be taken by Pal Manickam marked as A in the plaint plan. The middle portion should be taken and enjoyed by Sinthamani marked as B in the plaint plan and the rear portion should be taken and enjoyed by the said Ekambaram marked as C in the plaint plan. All the sharers i.e Pal Manickam, Sinthamani and Ekambaram were in possession and enjoyment of their respective portions into A, B, C portions with backyards marked as A1, B1, C1 respectively in the plaint plan till their lifetime.

3. The said Pal Manickam was in possession and enjoyment of the front portion of the property marked as A in the plaint plan with backyard portion. After his life time, the plaintiff's husband P.Selvaraj was in possession and enjoyment of the same as his only legal heir, who

inherited the same. The said Sinthamani was in possession and enjoyment of the middle portion of the property marked as B in the plaint plan with backyard portion marked as B1 in the plaint plan till his death. After his lifetime, his wife Kamakshi Ammal and then Minor son Mahendran were in possession and enjoyment of the same as his only legal heir, who inherited the same.

4. The petitioner husband P.Selvaraj was in possession and enjoyment of the front portion marked as A in the plaint plan with vacant backyard portion. The petitioner husband P.Selvaraj, who purchased the middle portion marked as B in the plaint plan with vacant backyard portion marked as B1 in the plaint plan as a vacant site from the said Kamatchi Ammal for herself and as guardian of her minor son then Minor. Mahendran, rep by his guardian and mother Kamatchi Ammal under a Registered Sale deed dt 02.05.1980 registered as Doc.No.1078/1980 for a good and valid consideration. The petitioner husband P.Selvaraj had put up a RCC construction in both in the front and middle portion i.e A & B as marked in the plaint plan and residing along with his family. The petitioner husband has executed a registered settlement deed dt 07.01.2020 in favour of the petitioner as his wife, gifting away the middle portion with vacant backyard portion and the same was registered as Doc.No.108/2020.

5. The patta No.781 issued by the Zonal Deputy Tahsildar, Kanchipuram, in the joint names of petitioner and adjacent owners viz defendant and one Mahendran, with present sub division S.No.191/32.

6. The respondent/defendant is the owner of the rear portion of the property marked as C in the plaint plan with backyard portion marked as C1 in the plaint plan. The respondent/defendant has started construction in his portion marked as C & C1 in the plaint plan and unlawfully put up a construction in the common narasam marked as DEFG in the plaint plan. The defendant try to annex his portion thereby blocked the common narasam and preventing us from using the common narasam marked as DEFG in the plaint plan. When the petitioner husband enquired the illegal construction by the defendant, the defendant is using abusive words and the defendant was very adamant and continuing the illegal construction work in the common narasam. The petitioner husband died on 10.06.2020. The respondent/defendant is highly influential person and the respondent continue his unlawful construction over the common narasam marked as DEFG portion in the plaint plan. If the Advocate commissioner is appointed to note down the physical features of the suit property, it will be very helpful for this court to avoid much oral evidence at the time of trial. The petitioner have got a prima facie and the balance of convenience is also in his favour. If the petition is not allowed. the

petitioner will be put to much loss and injury which cannot be compensated in terms of the money. Hence this petition.

7. The respondent filed his counter and the gist of the same is as follows:-

The respondent denies the entire allegation mentioned in the affidavit and petition are false. The respondent submitted that the patta No.781 issued by Zonal Deputy Thasildhar, Kanchipuram, in the joint names of Vasanthi, Mahendran, Santhanam with present sub division S.No.191/32 and the said Selvaraj executed a registered settlement deed dated 07.01.2020 in favour of Vasanthi gifting away the middle portion marked as B in the plaint plan with vacant backyard portion marked as B1 in the plaint plan and the same was registered as D.No.108/2020 and the settle have acquired a valid title and she is in peaceful possession and enjoyment of the middle portion with backyard marked as B & B1 in the plaint plan are false, untrue and unsustainable in law and on facts. The petitioner is intentionally filed the above petition to appoint an advocate/ commissioner. The purpose mentioned in the affidavit for appointing the advocate/commissioner is not clear. In order to create some facts or search something to create evidence, the petitioner has filed the above petition. Hence this petition may be dismissed with cost.

8. The point for consideration in this petition is whether this petition is to be allowed or not.

The Point:

9. Heard both sides. The petitioner/plaintiff sought for appointment of Advocate Commissioner in respect of the suit property and the common narasam marked as DEFG portion. The respondent contention is that the patta No.781 issued by Zonal Deputy Thasildhar, Kanchipuram, in the joint names of Vasanthi, Mahendran, Santhanam with present sub division S.No.191/32 and the said Selvaraj executed a registered settlement deed dated 07.01.2020 in favour of Vasanthi gifting away the middle portion marked as B in the plaint plan with vacant backyard portion marked as B1 in the plaint plan and the same was registered as D.No.108/2020 and the settle have acquired a valid title and she is in peaceful possession and enjoyment of the middle portion with backyard marked as B & B1 in the plaint plan are false. During enquiry, the petitioner stated that the respondent/defendant made encroachment over the common narasam marked as DEFG and petitioner house and backyard B & B1 portions. This court in order to clarify the above said point and to arrive at clear decision whether the defendants are made construction in common narasam, it deems fit to appoint Mr.V.Elango, an advocate Commissioner of this case. The Advocate Commissioner

is directed inspect the suit property and measure the same with help of Surveyor and to file a report and plan, he remuneration is fixed as Rs.3,000/- and the petitioner's counsel is hereby directed to pay the same to the advocate commissioner on or before 25.08.2022 and to file memo that effect. For report call on 26.08.2022

10. In the result, this petition is allowed. No costs.

Dictated to the steno-typist, who directly typed the same in her computer, corrected and pronounced by me in open court, this the 4th day of August 2022.

Sd/-R.Rajeswari
PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM