

**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 Monday, this the 8th day of August 2022

IA.No.3 of 2022
In
O.S.No. 71 of 2021

V.Anandan

...Petitioner/Plaintiff

/Versus/

1. Kannaki
2. Radhika

...Respondents/Defendants

This petition having coming up on 11.07.2022 for final hearing before me in the presence of Thiru.V.Mohan, R.Kameshwari and P.Gowtham, advocates for the petitioner and Thiru.L.Sowmiya Narayanan, advocate for the respondents 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 Rules 9 of CPC to appoint advocate commissioner to note down the physical features and measure the schedule mentioned property along with surveyor as per title deed and revenue records and take photos of building portion and direct him to submit his report along with sketch.

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

The petitioner submitted that the petitioner is the absolute owner of the 'A' schedule property and purchased the same one P.Ramu vagaiyara under registered sale deed document No.969/2018 dt 20.09.2018 for valuable consideration. After purchase the property the revenue record patta has been issued in his favour. The suit property house measuring east to west on northern side 25 feet, on southern side 22 feet, North to South on eastern side 59 feet and on western side 57 feet as such total extent is 1363 Sq ft. bounded north by Bharathi Street, South by S.No.632/15A Rajendiran house plot, East by Ayiyammal house plot, West by Kisthappa Naicker houst plot. At presently on west by 2nd defendant's newly constructed house.

3. The 2nd defendant is the owner of western side portion property i.e S.No.632/14A and measuring east to west on northern side 11 feet and southern side 10 1/2 feet, North to South both side 40 1/2 feet. The 2nd defendant purchased the above said property from one Pachaiyappan vide Doc.1055/2018 dt 08.10.2018. In the A schedule property on northern side the petitioner house constructed east to west 21 feet and remaining 4 feet on western side left vacant place as mentioned in the plaint rough sketch ABCD portion. Presently the 2nd defendant has constructed a house east to west 16 feet North to

South 22 feet by including their common way of 3 1/4 feet. Therefore at presently there is no common way to defendant's property. Before construction of house, the petitioner have rightly mentioned about the petitioner's 4 feet vacant place on western side of the suit 'A' schedule property, the defendants told that they will construct anything in the vacant place. But in the petitioner absence, the defendants were constructed terrace cement roof floor by extent 3 feet east to west and 22 feet north to south i.e 19 feet east to west as balcony on eastern side i.e. 4 feet vacant place which is mentioned B schedule property as ABCD in rough sketch.

4. In aforesaid situation the petitioner requested the defendants to remove the excess 3 feet terrace roof floor in the petitioner vacant place, initially the defendants agreed to remove the 3 feet roof floor which was constructed in the petitioner vacant place, after completion of entire building work all of sudden the defendants refused to remove the illegal construction of terrace roof floor and also put up 3 feet height small compound in the vacant place. Therefore the petitioner informed to his vendor P.Ramu about illegal constructions of defendants and also conducted panchayath, but the defendants very adamantly refused to remove the excess 3 feet roof floor by saying that they are constructed within their land. In the said situation the plaintiff has requested the defendants to measure the

property of both, the defendants prevented and refused to measure the property.

5. Since defendants were illegally tried to encroach the petitioner property, the petitioner lodged police complaint but police official has not received the petitioner complaint. Therefore the petitioner filed the present suit for permanent injunction and mandatory injunction against the defendants. Since the petitioner filed for mandatory injunction to removable of encroachment of defendants it is necessary to demarcate the suit properties for identify the encroachment area.
6. In afore said situation it is just and necessary to appoint advocate commissioner to note the physical features and measure the suit property along with Surveyor as per title deed and revenue records. The advocate commissioner report will be help to the court to decide the disputes in respect of the suit property. By appointment of advocate commissioner will not be causing any prejudice to the defendants. If advocate commissioner not appointed. The petitioner will be put into great hardship and the same cannot be compensated. Hence this petition.
7. The 2nd respondent filed his counter, adopted by the 1st respondent and the gist of the same is as follows:-

The respondent submitted that there are lot of defects in the

plaint as well as in the petition, whereas the faultness was completed in the accompanying petition. The A & B schedule properties mentioned in the petition are suit properties. But C schedule property is not a suit property. The affidavit is silent how the properties which are not suit property can be included in the petition and it is inexplicable and untenable. The question of appointment of commissioner does not depend upon clearly whether any prejudice caused to other side. Instead there should be sufficient basis and justification as also an effective need. The petitioner is trying to collect evidence which cannot be permitted. Hence this petition may be dismissed.

8. The point for consideration in this petition is whether the petitioner is entitled to the relief claimed by him?

The Point:

Heard both sides. The petitioner/plaintiff sought for appointment of Advocate Commissioner in respect of the suit property. During enquiry, the petitioner stated that the defendants have to remove the excess 3 feet terrace roof floor in the petitioner vacant place. This court in order to clarify the above said point and to arrive at clear decision whether there is an encroachment by the defendant in the suit property, it is necessary to appoint an advocate commissioner to inspect the suit property with the help of surveyor

i.e A and B schedule property mentioned in this petition. If the A & B schedule property are inspected, it will elucidate whether, there is an encroachment by the defendant on it. So there is necessity arise to inspect the C schedule property which is not suit property. In order to ascertain whether the defendants are put an illegal construction of 3 feet terrace roof floor, it deems fit to appoint Mrs.J,Karpagam, as 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, her 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 26.08.2022 and to file memo that effect. For report call on 29.08.2022

9. In the result, this petition is partly allowed. No costs.

Dictated to the steno-typist, typed directly by her in computer and corrected and pronounced by me in open court this the 8th day of August 2022.

Sd/-R.Rajeswari
PRINCIPAL DISTRICT MUNSIF
KANCHEEPURAM