

**IN THE COURT OF THE DISTRICT JUDGE, KARUR**  
**PRESENT:- THIRU R. SHANMUGASUNDARAM, B.Com., L.L.B.,**  
**DISTRICT JUDGE.**

Wednesday the 17<sup>th</sup> day of April 2024

**E.A.No.5/2023 in E.P.No.36/2021 in O.S.No.44/2012**

**CNR.No.TNKR01000380-2021**

.....

B. Meena alias Meenakshi ... Claim Petitioner/Objector/3rd Respondent

vs.

1) Vijayalakshmi ...1st Respondent/Petitioner in E.P./Plaintiff

2) A. Murugesan (died on 2020) ...2nd Resondent/Defendant

3) Asha

4) Baby ...2 and 4 Respondents/Respondents 2 and 4 in  
Execution petition

This petition coming on before me for final hearing on 11.12.2023 in the presence of Thiru. A.Mohammed Yousuf, advocate for the petitioner, Thiru.T. Ravikumar, advocate for the Respondents 1,3, and 4, and the 2<sup>nd</sup> respondent reported as dead, and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court passed the following

**ORDER:-**

The Execution petition has been filed by the 1<sup>st</sup> Respondent under Order 21, Rule 58 of CPC.

**2) The brief averments in the petition filed by the Petitioner:**

The Petitioner is the 3<sup>rd</sup> respondent in the execution petitioner. The Original suit was filed for Specific Performance of contract of sale based on the sale

agreement executed on behalf of the 2<sup>nd</sup> respondent. During the pendency of the E.P., the 2<sup>nd</sup> respondent died leaving behind the petitioner/3<sup>rd</sup> respondent and 4<sup>th</sup> respondents were impleaded as II class legal heirs of the 2<sup>nd</sup> respondent. However, the petitioner has filed this petition in her individual capacity of B schedule property described in the Execution Petition is shown as C schedule in the petition based on the delivery warrant issued by this court. The Court Amin came to the property on 03.06.2023. At that time the petitioner presented obstacle petition to the court Amin. He refused to receive the same. However, the court Amin did not hand over the possession for various reasons.

As a matter of fact, the 2<sup>nd</sup> respondent and his father has got the property under a registered partition deed dated 15.02.1984. The property is described as a A schedule in the partition deed and the A schedule in the petition as well. The partition of the property described in the 1<sup>st</sup> item of the A schedule property an extent of 31-1/2 north-south 73-1/2 totally 2756 sq.ft is the property described in the execution petition and the C schedule in this petition.

The 2<sup>nd</sup> respondent and his father Appa Durai Pillai have sold the B schedule property and D schedule property through a registered sale deed dated 08.04.1987 document No.385/87 in favour of one Rajeswari with common pathway marked as a blue colour in the plan as D1, D2, D3 and D4 filed alongwith this petition. The abovesaid Rajeswari has sold the B schedule property alongwith common pathway

right in favour of Auditor P.R.Mahadevan on 14.03.1996. The petitioner herein purchased the B schedule property alongwith common pathway right from the power agent of Auditor P.R. Mahadevan on 15.09.2020. The abovesaid document No.8796/20 document would clearly show the existence of the common pathway which runs from Karur Jawahar Bazaar towards northern side. The 1<sup>st</sup> respondent had entered into a sale agreement. But, the 2<sup>nd</sup> respondent on 02.07.2012 thereafter, he filed a suit and got the sale deed dated 10.03.2020 in her favour. The 1<sup>st</sup> respondent after knowing the existence of the north south pathway has entered into the sale agreement with the 2<sup>nd</sup> respondent. However, the abovesaid north-south common pathway has been suppressed in the sale agreement. Even before the sale agreement, the existence of the abovesaid north-south common pathway is shown as 1787-1/2 sq.ft. Therefore, the 1<sup>st</sup> respondent with a malafide intention has suppressed the existence of the pathway and got the sale deed in her favour. Further the 2<sup>nd</sup> respondent had entrusted the C schedule property with Vimala and Rajaram for bogiyam. The 1<sup>st</sup> Respondent suppressed the abovesaid fact and failed to implead the abovesaid Vimala and Rajaram, as the respondents in the execution petition. Further the petitioner, 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the II class legal heirs of the deceased Murugesan. The petitioner, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have filed a suit against the revenue officials for issuance of the legal heirship certificate and the same is pending on the file of the District Munsif Court. The 1<sup>st</sup> respondent impleaded the petitioner, 3<sup>rd</sup> and 4<sup>th</sup> respondents in the execution petition without filing any legal documents. Further, the present EP has been filed in the year of 2021. But the 2<sup>nd</sup> respondent died

in the year 2020. After the demise of the Murugesan, the petitioner suppressed the same and filed this EP in the year of 2021. Therefore, this petitioner has filed this application to declare that the property described as D1,D2,D3 and D4 and coloured as blue colour in the rough plan is a north-south common pathway and consequently to declare that the 1<sup>st</sup> respondent, petitioner have no right to get a delivery of the abovesaid pathway, for appointment of commissioner or administrator with a direction to inspect the C and B schedule properties and to note down the physical features with the help of Karur Municipal Surveyor and to dismiss the E.P with costs.

**3) The brief averments in the Counter filed by the 1<sup>st</sup> Respondent is as follows:**

The averments stated in the petition is denied as false. In fact, there is no pathway on the western side of the property purchased by 1<sup>st</sup> respondent. On 02.07.2012 the 2<sup>nd</sup> respondent executed sale deed in favour of 1<sup>st</sup> respondent in respect of the eastern side property situated below the property of Senthilkumar. It was clearly mentioned as the side of eastern property purchased by Senthilkumar. The common pathway does not situate on the western side of the property mentioned in execution petition. To drag on the execution proceedings, the petitioner in E.P. jointly with other respondents and with an malafide intention to file this petition. The rough plan filed in the petition is denied. Hence, the petition has to be dismissed with costs.

4) On the side of petitioner, PW1 was examined and Ex.P1 to Ex.P8 have been marked. On the side of Respondents, RW1 was examined and Ex.R1 to Ex.R3 have been marked.

5) Heard both side arguments. The petitioner has filed the objection petition under Order 21, Rule 97 of CPC. To declare her right, over the pathway described as D1 to D4 and marked as blue colour in a rough plan marked as Ex.P2 and further to declare that the 1<sup>st</sup> respondent is not entitled to get the delivery of the abovesaid pathway through court.

6) The common issue between the parties is a pathway of North-South which runs from Karur Jawahar road towards north?

7) **ANSWER TO THE POINT:**

According to the petitioner, he has right to file objection in respect of non-joinder of the Vimala , Rajaram who have got bogiyam from the said deceased Murugesan, the petitioner is in no way connected with the abovesaid bogiyam and he has not claimed portion over the property described in the schedule of the E.P. Therefore, the petitioner has no locus standi to raise the plea of non-joinder of necessary parties. Further the petitioner has filed yet another petition that the 1<sup>st</sup> respondent has proceeded EP against the II class legal heirs of deceased Murugesan/ Judgment debtor without having any legal document. But, admittedly the petitioner

herein , 3<sup>rd</sup> and 4<sup>th</sup> respondents are the II class legal heirs of the judgment debtor Murugesan. The petitioner himself admits that the 3<sup>rd</sup> and 4<sup>th</sup> respondents and herself for the II class legal heirs of the deceased Murugesan. Further, the abovesaid issue has already been decided by this court in the order passed in the execution petition dated 25.04.2023. Therefore, the petition is barred by the taking the very same plea under explanation of 42 of Sec.11 of CPC.

8) Further, the common contention raised by the petitioner is a pathway right which is leading to her property described as B schedule of the petition B schedule property is a part and parcel of the property allotted to the 2<sup>nd</sup> respondent Murugesan and his father Appa Durai under Ex.P3 partition deed dated 15.12.1982. Thereafter the 2<sup>nd</sup> respondent and his father Appa Durai sold the B schedule property in favour of one Rajeswari under Ex.P4 dated 04.08.1987. In the abovesaid in Ex.P4, the north-south pathway has not been definitely described in the sale deed it has been mentioned as western side boundary as follows:

**“ தென் வடல் நீளியாக மெயின் ரோட்டிலிருந்து வடக்கு நோக்கி வரும் தென் வடல் பொது வழி நடைபாதைக்கும் கிழக்கு. ”**

9) The abovesaid description has also been shown in Ex.P5 and Ex.P6 sale deeds. The existence of the abovesaid north-south pathway is not denied by the Decree Holder. According to the 1<sup>st</sup> respondent, the north-south pathway is situated

on the western side of the property belongs to one Senthilkumar. In the Ex.P3 rough plan, the property of the Senthilkumar is shown as the red colour portion. According to the petitioner, the north-south common pathway runs on the eastern side of the property shown to Senthilkumar by Murugesan. The sale deed executed by Murugesan in favour of Senthilkumar is marked as Ex.R1 on the side of the respondents. The Respondent has also filed a rough plan and the same has been marked as Ex.R2. Therefore, on perusal of the both rough plans Ex.P2 and Ex.R2, the same would reveal that there is a pathway which runs from Jawahar Bazaar towards northern side. According to the petitioner, the abovesaid pathway situates on the Eastern side of the property belongs to the Senthilkumar as per the respondent's case. The said pathway runs of the western side of the property belongs to the Senthilkumar. The petitioner has purchased the property from Auditor R. Mahadevan on 15.09.2020. The decree holder purchased the property on 10.03.2020. The sale deed stands in the name of Decree Holder class II legal heir/ the 1<sup>st</sup> respondent is marked as Ex.P7. In Ex.P7, there is no whisper about the description of property in the C schedule properties. Therefore, in order to find out correct lie and location of the property whether the north-south pathway situates on the eastern side of the property belongs to the Senthilkumar, an appointment of Advocate Commissioner with a direction to inspect the petition B schedule property with the help of Municipal Surveyor and to file a report would meet the ends of justice. Therefore in order to arrive at a correct conclusion and to ascertain the correct lie and location of

the property, this court is inclined to appoint the Advocate Commissioner to inspect the abovesaid property with the help of surveyor.

10) Accordingly, Thiru. R. Anbaiah, is appointed as an Advocate Commissioner. The Advocate Commissioner can inspect the petition B and C schedule properties with the help of Karur Municipal Surveyor, to note down the physical features and to measure out the property, to file the report with plan. The remuneration of the Advocate Commissioner is fixed as Rs.15,000/- and it shall be paid by the petitioner directly to the Advocate Commissioner. The Advocate Commissioner shall inspect the property after due notice to both the petitioner and the Respondents 1, 3 and 4. For Advocate- Commissioner's report and plan, call on 07.06.2024.

. Dictated to the Steno-typist, transcribed by her, corrected and pronounced by me in open Court on this the 17<sup>th</sup> day of April 2024.

Sd/-R. Shanmugasundaram  
**DISTRICT JUDGE,  
KARUR.**

**LIST OF WITNESSES AND EXHIBITS:-**

**PETITIONER'S SIDE WITNESS:-**

PW1 Meena alias Meenakshi (Claim Petitioner)

**PETITIONER'S SIDE EXHIBITS:-**

Ex.P1	03.06.2023	Refusal of receiving Objection petition by the Court Amin from the petitioner.
Ex.P2	-	Rough sketch shown as C schedule property and northern side of the property with common pathway details

Ex.P3	15.12.1984	Certified copy of partition deed between 1 <sup>st</sup> respondent and others
Ex.P4	08.04.1987	Certified copy of sale deed executed by 1 <sup>st</sup> respondent and his father Appadurai in favour of Rajeswari
Ex.P5	14.03.1996	Certified copy of sale deed executed by Rajeswari in favour of Auditor P.R. Mahadevan
Ex.P6	15.09.2020	Certified copy of sale deed executed by General Power of Attorney of Auditor P.R. Mahadevan in favour of petitioner
Ex.P7	10.03.2020	Certified copy of sale deed executed by Hon'ble Principal District Judge, Karur in favour of 1 <sup>st</sup> respondent
Ex.P8	-	Certified copy of Aadhar card of the petitioner

**RESPONDENT'S SIDE WITNESS:-**

RW1 Tmt. Vijayalakshmi (1<sup>st</sup> Respondent)

**RESPONDENT'S SIDE EXHIBITS:-**

Ex.R1	28.10.2020	Registration copy of sale deed executed by Auditor Mahadevan and 2 <sup>nd</sup> respondent in favour of Senthilkumar
Ex.R2	-	Rough sketch
Ex.R3	10.03.2020	Original registered sale deed executed by Hon'ble Principal District Judge, Karur in favour of 1 <sup>st</sup> respondent

Sd/-R. Shanmugasundaram  
DISTRICT JUDGE,  
KARUR.