

IN THE COURT OF THE DISTRICT MUNSIF, MELUR.

Present: Thiru.S.MUTHUKRISHNA MURALIDAS, M.A.M.L.,

DISTRICT MUNSIF, MELUR.

Saturday, the 03<sup>rd</sup> day of August 2024

I.A No.3/2024

in

O.S No.117/2009

1. M. Balkkish Beevi (Died)
2. Mymoon.
3. Rasiya Begum.
4. Fathima.
5. Abubakkar Sikkandar.
6. Shaik Saleem.
7. Mathubala @ Rajathi
8. Kasim.
9. Ayubkhan.
10. Merina.
11. Asanbanu.
12. Nikran.

...Petitioners/Plaintiffs

.Vs.

1. The State of Tamilnadu represented by  
It's District Collector,  
Madurai District.
2. The Revenue Divisional Officer,  
Othakadai, Madurai.

3. The Tahsildar,  
Melur Tahildar Office,  
Melur.
4. P. Ramasamy Chettiar(Died).
5. K. Sathyavasan.
6. M. Kannan.
7. Kirubakaran(Died).
8. Muthu @ Deepa.
9. Kanimozhi.
10. Subasir. ...Respondents/Defendants

This petition has been coming before this court for final hearing on 29.04.2024 in the presence of Thiru.K.Sulthan Allowdhin, Advocate for the Petitioners/Plaintiffs and Thiru. A. Sekar, Government Pleader for the 1 to 3 Respondents/Defendants and Thiru. N. Raja, Advocate for the defendants No.5 and Thiru. M. Vairamani, Advocate for the defendants No.6 and defendants No.8 to 10 having been set exparte, and upon hearing the enquiry on both side and having stood over for consideration till this date, this court delivered the following...

### **ORDER**

1. This petition is filed U/O.26. R.9 CPC to appoint an advocate commissioner, so as to make local investigation of the suit property.

2. The case of the petitioner is that the suit property is comprised under S.No.204/2017 of Navinipatti Village. The total extent of the suit property is 60 feet on the East-West and 54 feet on the North-South, in which 27 feet East-West and 31 feet on the North-South is house site.

The suit property belonged to the petitioner's father Mohammed Abdul I.A.No.3/2024 in O.S.No.117/2009

Kadhar by inheritance and after his demise on 26.08.1984, the 1<sup>st</sup> petitioner was allowed to enjoy the property. Accordingly the 1<sup>st</sup> petitioner was residing in the suit property having Door No.1/37 and now the new door No.4/55. One Periyayya Chettiyar had sold the suit property on 17.07.1928 to the petitioners ancestors. Now, the 5<sup>th</sup> respondent on 02.04.2017 encroached the suit property completely by erecting compound wall, which is illegal. Hence the plaint has been amended by inserting a relief of Mandatory injunction. Therefore, based on the deed dated 17.07.1928 executed by Periyayya in favour of the petitioners ancestors, the suit property has to be measured by appointing an advocate commissioner, with the help of qualified surveyor and find out the encroachment in the suit property.

3. The respondent has contended that the deed dated 17.07.1928 contains no Survey Number for the reference of the property. On what basis, the S.No.202/4 has been mentioned in the suit schedule has to be explained by the petitioners. Further, alleged that the four boundaries in the suit schedule is different from the sale deed dated 17.07.1928. The suit property belonged to the respondent's predecessor in title and he purchased the same. The respondent further alleged that he has purchased property under S.No.704/78, 704/77, 704/76 and all together made jointly, raised a compound wall. The FMB sketch and the sketch drawn by the land acquisition authority shows that S.No.704/74 is the property belongs to Periyakaruppan Chetty and the same was purchased by the respondent. The petitioner is referring S.No.704/73 but filing case for S.No.704/74. Therefore, there is no clarity in the case of the petitioner and thus this petition is liable to be dismissed.

4. Petitioner has marked a notice dated 05.04.2017 issued to the I.A.No.3/2024 in O.S.No.117/2009

respondent demanding to remove encroachment made by him is marked as Ex.P1 and the postal Acknowledgment card is marked as Ex.P2.

5. Likewise, the respondent has marked FMB sketch as Ex.R1. Land acquisition sketch as Ex.R2, 4 sale deeds in the name of respondent marked as Ex.R3 to Ex.R6.

6. Heard both side and perused records.

7. Now, the point to be determined is whether, it is necessary to appoint an advocate commissioner to make local investigation of the suit property?

8. The main suit is filed by this petitioner for the relief of Declaration of title and consequential injunction and for other reliefs. Subsequently, plaint was amended in the year 2018 by inserting the relief of mandatory injunction to revenue the encroachment alleged to have made by the respondent. Now, the main suit is posted for trial, this petition came to be filed. The petitioner is seeking to measure the suit property based on the sale deed dated 17.07.1928. Admittedly, no Survey Number mentioned in that sale deed. As per that sale deed, it was executed by one Periyayya Chettiar to and infavour of Sikkandhar Sayubu, Sheik Moideen, Sulaka Beevi Ponnu Beevi, Thangammal, Mymoon Beevi for an extent of East-West 60 feet and North-South 54 feet covering by its four boundary on east – Periyakaruppa Chettiyar, on west, South-North pathway, on North-East-West pathway, on South Thirupathur road.

9. The suit property shown as if it was within the above said extent of 60X54 Sq.ft. A perusal of Ex.R1 which is the FMB for the properties under S.No.704 in which the four boundaries of S.No.704/73 is matched with four boundaries found in the sale deed dated 17.07.1928, not I.A.No.3/2024 in O.S.No.117/2009

matched the four boundaries of the suit property. To be very specific, the Northern boundary shows as East-West pathway, Western boundary shown as North-South pathway and southern boundary shown as Thiruppathur main Road in the S.No.704/73 in FMB sketch Ex.R1. The same is found in the sale deed dated 17.07.1928. As such, on what basis, this petitioner is claiming that their property under sale deed dated.17.07.1928 is lies under S.No.704/74 is not explained. Furthermore, no revenue records produced to show that the suit property lies under S.No.704/74.

10. Therefore, without any materials produced by the petitioner, regarding to find out suit property, this court feels that, it is not proper in appointing advocate commissioner to make local investigation as prayed by the petitioner.

11. For, the aforesaid reason, this petition is devoid of merits and thus dismissed. No cost.

This order is written by me and typed by the Steno Typist, and corrected and pronounced by me in open court, this the 03<sup>rd</sup> day of August 2024.

Sd/-  
(S. Muthukrishna Muralidas, M.A., M.L)  
District Munsif,  
Melur.

List of Witnessess on the side of Petitioner : Nil

List of Documents on the side of Petitioner:

| Exhibit | Date       | Description      | Remarks   |
|---------|------------|------------------|-----------|
| Ex.P1   | 05.04.2017 | Advocate Notice. | Xerox.    |
| Ex.P2   | -----      | AD Card.         | Original. |

List of Witness on the side of Respondents : Nil  
List of Documents on the side of Respondents:

| Exhibit | Date       | Description           | Remarks |
|---------|------------|-----------------------|---------|
| Ex.R1   | -----      | Rough Sketch.         | Xerox.  |
| Ex.R2   | -----      | Highway Rough Sketch. | Xerox.  |
| Ex.R3   | 26.06.1996 | Sale Deed.            | Xerox.  |
| Ex.R4   | 03.08.2009 | Sale Deed.            | Xerox.  |
| Ex.R5   | 03.04.2009 | Sale Deed.            | Xerox.  |
| Ex.R6   | 03.04.2009 | Sale Deed.            | Xerox.  |

Sd/-  
(S. Muthukrishna Muralidas, M.A., M.L)  
District Munsif,  
Melur.

IA No.3/2024  
in  
O.S.No.117/2009  
Fair/Draft Order ,  
Date: 03.08.2024