

IN THE COURT OF DISTRICT MUNSIF, VADIPATTI, MADURAI DT.**Present : Thiru. M.P. Ramkishore, B.E., BL., (Hon's)**

District Munsif, Vadipatti

Dated 22nd day of August 2024**IA. No.01/2023****In****O.S. No.28/2023**

Rajammal,
W/o. Narayanan,
Vadipatti Taluk, Madurai District.

---- *Petitioner / Plaintiff****//Versus//***

Seenivasan,
S/o. Nallusamy @ K. Subbareddi,
Vadipatti Taluk, Madurai District.

---- *Respondent / Defendant*

This petition was filed before this Court on 30.03.2023 coming before me for final hearing on 22.08.2024 Advocate Thiru. M. Elangovan appeared for Petitioner / Plaintiff and Advocate Thiru. N. Rajaji appeared for Respondent / Defendant. Upon hearing arguments of both sides and upon perusing the available material records, today this Court has delivered the following....

ORDER

1. The petition was filed under order. 26 rule. 9 of C.P.C. to appoint an advocate commissioner to inspect the suit schedule property, measure it with the help of surveyor and to file a report with plan.

2. Petition averments in brief:

The petitioner's case was that the petitioner / plaintiff's filed the main suit for the relief of declaration and permanent injunction. The suit property was 64 cent punja land located in S.No. 138/1A at katchaikatti village. The petitioner's contention was that, the petition property was purchased by her grandmother Alagammal on 07.09.1953, after the death of Alagammal and petitioner's mother Letchumiammal, the property devolved upon the plaintiff and her sister Renganayagi. On 13.07.2022, the said Renganayagi executed a settlement deed for her share of the property, in favour of the petitioner. Thereby the petitioner become the absolute owner of the petition property and she was in possession of the property. The respondent / defendant was the owner of land located on the southern side of petition property. The respondent demanded the petitioner to sell the petition property to him, as the petitioner refused the respondent on 25.12.2022 made threats to the petitioner. Later the respondent damaged the southern side bunds and removed the boundary stones, thereby merged the petitioner's property with the respondent's property. The petitioner informed the incident to the police but they asked to get civil remedy from court, thereby the petitioner filed this main suit. The petitioner filed this petition to survey the property, erect the boundary stones and to prove the boundary stones were removed and bunds were destroyed along with the nature of the suit. Hence, the petitioner filed this petition to appoint advocate commissioner for measuring the petition property.

3. Counter averments in brief:

The respondent challenged the petition by denying the entire petition. The respondent denied the title and possession of the petitioner. The respondent pleaded that his father purchased 97 ½ cent land in the survey no. 138/1 on 31.03.1947. Later on 21.11.1981, the property was allotted to this respondent by partition, since then the respondent was in possession of the property. The petition property survey no. 138/1A was a part of respondent's property in survey no. 138/1. The deeds mentioned in the petition were prepared unlawfully. To prove the respondent's right in the property, the respondent had filed counter claim. The petitioner and her previous vendors did not have any right

over the property. Further by mere comparing the four side boundaries mentioned in the documents filed by both the sides, would show that the petition was filed with wrong details of the property. The petitioner had unlawfully mutated the respondent's property into S.No. 138/1A and 138/1B to grab the property. Hence, the petition is liable to be dismissed.

4. **Point to determine:** Whether the petitioner is entitled for appointment of advocate commissioner as sought for?

Heard both sides. Records perused. The main suit was in the stage of plaintiff side evidence. Admittedly, the main case was filed for declaration of title and permanent injunction. The respondent had filed counter claim for declaration and permanent injunction.

5. The learned petitioner counsel argued that this petition was filed seeking to appoint an advocate commissioner to visit and measure the petition premises to prove that the respondent removed the boundary stones, destroyed the bunds and to bring the nature of petition property before this court along with its dimensions.

6. On the other hand, the learned respondent counsel opposed the petition by stating that the petitioner only to collect evidence, the title and possession of the petition property was with the respondent. Hence advocate commissioner shall not be appointed and this petition must be dismissed. Ex. R. 1 to 3 was filed on the respondent side.

7. Under order 26 rule 9 of C.P.C., if the court find it fit, an advocate commissioner may be appointed for inspecting and surveying the suit property, to elucidate any matter in dispute. In this regard, *our Hon'ble High Court in S.Anand V. A.Jeyabalan (2020 (1) CTC 182)*, had directed that, advocate commissioner cannot be appointed to collect evidence or to find out the possessor of the property.

8. In the case in hand, the suit was filed by the petitioner / plaintiff for declaration of title and permanent injunction. The respondent / defendant had filed counter claim to contend that the title and possession of the petition property lies with the respondent.

9. Considering the both side rival submissions, it is found that the plaintiff's contention was that the respondent removed the boundary stones and destroyed the bunds. Hence, an advocate commissioner may be appointed to prove the damage caused by the respondent and also to measure the property for filing report with plan. The prayer sought by the petitioner clearly shows that the petitioner wants to appoint advocate commissioner to prove the damage caused by the respondent by removing boundary stones and damaging field bunds. Further on appreciating both the side pleadings and documents, clearly shows that the dispute was regarding the property in survey No.138/1. The boundaries mentioned for the petition property was in dispute but both the sides have no dispute in the main survey number of the property. Hence it is clear that identification, total extent and survey number of the property was not in dispute. In such scenario, since the main dispute was for title, the petitioner / plaintiff shall only prove her case by adducing evidence to prove her claim.

11. The Petitioner's main prayer in this petition was that, an advocate commissioner may be appointed to measure the property and to prove the damage caused by the respondent to boundary stones and field bunds. In this regard as already discussed, the petitioner / plaintiff had filed this suit for declaration of title of the suit property and she is duty bound to prove her title along with the boundaries and extent of the suit property. Further appointing advocate commissioner to note down the boundary stones and field bunds would amount to collection of evidence. ***Our Hon'ble High Court in S.Anand V. A.Jeyabalan (2020 (1) CTC 182)***, had decided that advocate commissioner cannot be appointed by court for collecting evidence. Thus, the plaintiff can very well prove the damage caused by respondent by letting evidence. This petition was filed to measure the suit property for proving its extent. At this juncture, this court cannot find any necessity to appoint advocate commissioner to measure the suit property to merely identify the suit property, while it is

the duty of the petitioner / plaintiff to prove the title of the suit schedule property along with its schedule mentioned boundaries and location. Thus, this court finds that appointing an advocate commissioner at this stage would amount to collect evidence alone but would not aid this court in deciding the case. Hence, this petition cannot be allowed.

12. ***In the result***, this petition is dismissed, no costs.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on 22nd day of August 2024.

Sd/-
M.P. Ramkishore,
District Munsif,
Vadipatti.

Petitioner side evidence and documents: Nil

Respondents side evidence : Nil

Respondents side documents:

Ex. R 1	Sale Deed dated 31.03.1947	Certified Copy
Ex. R 2	Sale Deed dated 19.09.1947	Certified Copy
Ex. R 3	Chitta No.899 stands in the name of Subbareddiyar	Certified Copy

Sd/-
M.P. Ramkishore,
District Munsif,
Vadipatti.

TRUE COPY

DISTRICT MUNSIF COURT

Vadipatti

Fair Order / ~~Draft Order~~

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Date : 22.08.2024