

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

District Munisf, Vadipatti

Dated 21st day of February 2025**IA. No.04 / 2024****In****O.S. No.30 / 2023**

R. Kathirvel,

S/o. Raj @ Rasuthevar

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

1. State of Tamil Nadu,
Rep. through the President,
Kadupatti Panchayat, Vadipatti.
2. State of Tamil Nadu,
Rep. through the Block Development Officer,
Vadipatti.
3. State of Tamil Nadu,
Rep. through the Tahsildar,
Vadipatti.
4. State of Tamil Nadu,
Rep. through the District Collector,
Madurai.

---- *Respondents / Defendants*

This petition was filed before this Court on 16.10.2024 coming before me for final hearing on 21.02.2025, Advocate Thiru. M. Vellaichamy and Thiru. R. Rajkumar appeared for Petitioner / Plaintiff, Learned Government Pleader appeared for the Respondents / Defendants. Upon hearing arguments advanced by both the sides' and upon perusing the available material records, today this Court has delivered the following....

ORDER

The petitioner had filed this petition under Order 26 rule 9 to appoint an advocate commissioner to inspect and measure the suit property with the aid of surveyor.

2. GIST OF THE PETITION:

The relevant portion of the petition in brief, the petitioner herein was the plaintiff in the main suit. The main suit was filed for permanent injunction. The petitioner's contention was that the petition property was in old s.no.426/1,2,3pa, new s.no.566/33 now presently natham s.no.566/37 belong to the petitioner and hence he was in possession and enjoyment of the petition property. Being so, the 1st defendant was trying to disturb the plaintiff's possession by attempting to encroach the petition property. Hence the petitioner filed this petition to appoint an advocate commissioner to inspect and measure the physical features of the petition property with the help of Surveyor and the Village Administrative Officer.

3. GIST OF THE COUNTER:

In the counter, the respondents denied the entire petition facts and stated that the respondents has no objection to inspect and measure the property located in Kadupatti in old survey426/1,2,3pa and new s.no.566/33, since the patta was issued to the petitioner's father Rasuthevar. But the property in natham s.no.566/37 was

belonged to the Government, which cannot be inspected and measured by an advocate commissioner. Further the respondents did not disturbed the petitioner's property. Hence the respondents prayed to dismiss the petition along with costs.

4. THE POINT FOR CONSIDERATION IS THAT: Whether the petition is liable to be allowed or not?

Records perused. The petitioner had filed the main suit seeking for the relief of permanent injunction. This petition is filed for appointment of an advocate commissioner to inspect and measure the petition property. The case of the petitioner is that the petition schedule mentioned property belong to him and thereby he was in possession of the property, but the respondents unlawfully trying to encroach the petition property. On the other hand, the respondents filed their counter and deny the petition facts by contending that the petitioners land was not disturbed and the land in survey no.566/37 was belong to the Government.

5. The learned petitioner counsel argued that this petition was filed to appoint an advocate commissioner to visit and measure the petition premises to prove the nature of petition property before this court along with its dimensions and to prove its possession.

6. In the case in hand, the suit was filed by the petitioner / plaintiff for permanent injunction. The respondent / defendant had denied the petitioners possession and claim that part of the petition property was in his possession.

7. Considering the both side rival submissions, it is found that the plaintiff's contention was that this petition was filed for appointment of advocate commissioner to prove the respondents encroachment in suit schedule property. The prayer sought

by the petitioner clearly shows that the petitioner wants to appoint advocate commissioner to prove the encroachment. On the other hand the respondent had denied the petitioner's right in the petition property. From perusal of entire records, it is clear that the suit was filed for bare injunction for vacant land, no encroachment was pleaded in the main suit and the location and dimension of the petition property was not in dispute. In such scenario, since the main suit was only filed for permanent injunction for vacant land, the petitioner / plaintiff shall only prove the case by adducing evidence to prove his claim.

8. The Petitioner's main prayer in this petition was that, an advocate commissioner may be appointed to measure the property and to prove the encroachment of the respondents. In this regard as already discussed, the petitioner / plaintiffs had filed this suit for permanent injunction and he is duty bound to prove his case by letting reliable evidence. The plaintiff can very well prove the possession by letting in evidence. At this juncture, considering the facts and circumstances of the case, this court cannot find any necessity to appoint advocate commissioner to inspect and measure the suit property to prove encroachment, as it was not pleaded in the plaint and the measurement of property and the location and dimension of property was not in dispute between both the parties. Thus, this court finds appointing an advocate commissioner to measure the property at this stage would not aid this court in deciding the main case. Even then this court is inclined to appoint advocate commissioner to note down the physical features of the property since the petitioner had pleaded that attempt to encroach the property was made by the respondents.

9. **In the result**, this petition is partly allowed. No costs. Advocate Tmt. Nachiyar is appointed as advocate commissioner to inspect the property in presence

of both the parties, to note down the physical features, to take photographs and to file report about the present condition of the suit property. The advocate commissioner need not measure the property. Advocate commissioner remuneration is fixed as Rs.5000/-, the petitioner shall deposit the fees in court on or before next hearing of the main suit. The advocate commissioner shall withdraw the fees after filing the report.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on 21st day of February 2025.

District Munsif,
Vadipatti.

Petitioner side witness and documents: Nil

Respondents side witness and documents: Nil

District Munsif,
Vadipatti.

Fair Order / ~~Draft Order~~

DISTRICT MUNSIF COURT

Vadipatti

Fair Order/~~Draft Order~~

I.A. No.04/2024

In

O.S. No.30/2023

Date : 21.02.2025

