

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

District Munisf, Vadipatti

Dated 08th day of August 2024**IA. No.430/2019****In****O.S. No.73/2019**

Pushpam,
W/o. Late Nallamareddiyar,
Vadipatti Taluk, Madurai District.

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

1. Amirdhavalli,
W/o. Rajendran,
Vadipatti Taluk, Madurai District.

2. J. Rajendran,
S/o. Jeyaram,
Vadipatti Taluk, Madurai District.

---- *Respondents / Defendants*

This petition was filed before this Court on 01.08.2019 coming before me for final hearing on 08.08.2024 Advocate Thiru. N. Rajaji appeared for Petitioner / Plaintiff and Advocate Thiru. G. M. Ramani appeared for Respondents / Defendants. Upon perusing the available material records, today this Court has delivered the following....

ORDER

1. The petition was filed u/o. 26 r. 9 and s.151 of C.P.C. to appoint an advocate commissioner to inspect the suit schedule property, measure with the help of surveyor and to file a report with plan.

2. Petition averments in brief:

The suit was filed by the petitioner / plaintiff for easement right, declaration, recovery of possession, mandatory injunction and permanent injunction. The petitioner had pleaded that, the petitioner was the owner of the suit property and was in its possession. In the suit property the present house was built by leaving 2 feet space on the north for air and light. The respondents being owners of the northern side land to the petitioner's property, built their house by encroaching the petitioner's 2 feet land. The respondents were constructing their house by denying access of air and light to the petitioner. Hence, the petitioner had filed this petition to appoint an advocate commissioner to inspect and measure the suit schedule property and file a report, to bring the nature and dimension of the petition property before this court.

3. **Counter averments in brief :** The respondents filed counter by denying entire petition averments and stated that the respondents did not try to encroach the petitioners' property but, was enjoying their own adjacent property. The respondents also contended that for more than 50 years the respondents wall and the petitioner's northern side wall were standing next to each other without any space between them. The respondents were building wall over the pre-existing old wall next to the petitioner's property. The petitioner without leaving any space on her northern side of the property, built her house in her whole extent of land and extended her steel roof into the respondents property. Hence, there was no encroachment made by the respondents.

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

Records perused. Admittedly, the main case was filed for easement, declaration of title, mandatory injunction and permanent injunction. The petitioner had contended that the respondents encroached the petition property. Thus, the petitioner came up with the present petition.

5. Under order. 26 rule. 9 of C.P.C. advocate commissioner may be appointed for inspecting and surveying the suit schedule property. But, as directed by ***our Hon'ble High Court in S.Anand V. A.Jeyabalan (2020 (1) CTC 182)***, advocate commissioner cannot be appointed to collect evidence or to find out the possessor of the property. On analyzing the petition in hand in the light of above referred dictum of our Hon'ble High court, from the pleadings of both the sides, it is clear that both petitioner and respondents properties lies next to each other. The petitioner's only contention was that, her house was built by leaving 2 feet space on the northern side and at present the respondents have encroached the 2 feet space. It was denied by the respondents. The dimension of the built up area was in dispute between both the parties. The petitioner had filed photographs to show that both the respondents house was built right next to the petitioner's house without any space. Since the petitioner's contention was that, she have 2 feet land on the northern side her house, this court is of the view that appointing an advocate commissioner would shed some light over the dimension of the suit property thereby aiding this court to meet the ends of justice. Further conducting local inspection, bringing the physical features of the schedule property before the court with the help of surveyor would aid the court to clearly understand the nature of suit property.

6. In this petition three properties were included in the schedule. The first was the petitioner's property, second was mentioned as the part of petitioner's property that is in dispute and the third was the respondent's property. According to the petitioner, the property in dispute was a part of petitioner's property. Hence, measuring the petitioner's property mentioned as 1st property alone in the petition schedule can only enable this court to get clear view of the land in dispute. Further in the petition schedule, to locate the petitioner's property, survey number was not mentioned but only four side boundaries were mentioned, thus to locate the petitioner's property, the advocate commissioner shall identify the property based on the four boundaries listed in property schedule of the petition and also shall take the aid of revenue officials. Commission shall be conducted in presence of respondents. Thus, this court appoints Advocate Mr. V. Alagarsamy as an advocate commissioner to inspect the suit schedule property, with the help of surveyor to measure the schedule property, to note down the physical features of the schedule properties, take photographs and file a report with plan. Advocate commissioner remuneration is fixed as Rs.7000/-, the petitioner / plaintiff is directed to deposit Rs.7000/- in court as advocate commissioner remuneration, within 2 weeks from the date of this order. The advocate commissioner is entitle to withdraw the remuneration amount after filing the report.

7. ***In the result***, this petition is allowed, no costs.

Directly dictated to the Stenographer and computerized error checked and pronounced in the open court on ***08th day of August 2024.***

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

Petitioner side evidence and documents: Nil
Respondents side evidence and documents: Nil

Fair Order / ~~Draft Order~~

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

TRUE COPY

DISTRICT MUNSIF COURT
Vadipatti
Fair Order / ~~Draft Order~~
IA. No.430/2019
In
O.S. No.73/2019
Date : 08.08.2024