

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

District Munisf, Vadipatti

Dated 19th day of September 2024**IA. No.02 / 2023****In****O.S. No.142 / 2023**

M. Selvarani,
W/o. Muthaiah,
Jeykindhpuram, Madurai District.

---- Respondent / Plaintiff**//Versus//**

1. G. Nagaraj,
S/o. Kodhandaraman,
Thiruppalai, Madurai Distirct.
2. S. Jothi,
S/o. Sandhanam,
Kondaiyampatti Village Utkadai,
Vadipatti Taluk, Madurai.
3. C. Velavendhan @ Governor,
S/o. Chandrasekaran,
Thanichiyam Village,
Vadipatti Taluk, Madurai.

---- Petitioner / Defendant

This petition was filed before this Court on 11.12.2023 coming before me for final hearing on 19.09.2024 Advocate Thiru. M. Thiyagarajan appeared for Petitioner / Plaintiff, Advocate Thiru. P. Chandramohan appeared for the Respondents / Defendants. Upon

hearing the arguments advanced by 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 and section 151 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 contention was that, the petition property originally belonged to K.K.Rajangam, after his death it devolved upon his heirs, 1. Kulandaivel, 2.Tirumalai babu and 3. Ramkumar. Later Kulandaivel and Ramkumar were deceased. The petitioner purchased the petition property on 01.10.2022 from Tirumalaibabu, legal heirs of Kulandaivel and Ramkumar by registered sale deed. The petitioner was in possession of the petition property from the date of sale. The 1st respondent being the owner of adjacent land was disturbing the possession of the petitioner in the petition property. The respondents also disturbing the petitioner by claiming that the petitioner had wrongly purchased some extent of their property but denied to measure the property. The petitioner informed the incident to the police but they asked to get civil remedy from court, thereby this petition was filed for appointment of advocate commissioner to prove the petition land was same as mentioned in the sale deed and to prove the possession.

3. Counter averments in brief:

The respondent challenged the petition by denying the entire petition. The respondent contended that the petition properties were initially belong to K.K. Rajangam, later it devolved upon his wife and then to their 1st son Kulandaivelu. The said Kulandaivelu executed a settlement deed on 22.10.2013 for the petition schedule 3 to 10 mentioned properties, in favour of his wife Yogeshwari. The said Kulandaivelu and his wife entered into agreement of sale for the properties with this 1st respondent and handed over the

possession of the property to the 1st respondent Kulandaivelu and his wife used to get the consideration amount in part to the tune of Rs.56,00,000/-, then as they tried to sell the property to other persons, this respondent gave a advertisement in newspaper regarding the property. Later Kulandaivelu died and his legal heirs entered into a sham sale deed with this plaintiff to defraud the 1st respondent. They also tried to disturb the respondents possession in the petition property. Hence there was no necessity to appoint advocate commissioner, this petition was filed without any merit and 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 trial. Admittedly, the main case was filed for permanent injunction. This petition was filed for appointment of advocate commissioner to prove the petition land was same as mentioned in the sale deed and to prove the possession. The respondents filed counter stating this petition to appoint advocate commissioner was not at all necessary.

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. On the other hand, the learned respondent counsel opposed the petition by stating that the petition was filed only to collect evidence, the possession of the petition property was with the respondent. Hence, advocate commissioner shall not be appointed and this petition must be dismissed.

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 permanent injunction. The respondent / defendant had denied the petitioners possession and claim that part of the petition property was in his possession.

9. 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 petition land in suit schedule was same as mentioned in the sale deed and to prove the possession. The prayer sought by the petitioner clearly shows that the petitioner wants to appoint advocate commissioner to prove the possession but both the sides have not raised any dispute regarding the location and extent 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 suit was only filed for permanent injunction, the petitioner / plaintiff shall only prove the 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 possession. In this regard as already discussed, the petitioner / plaintiff had filed this suit for permanent injunction and she is duty bound to prove her case by letting evidence. Further appointing advocate commissioner to find possession 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. 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 measure the suit property to prove possession. Thus, this court finds appointing an advocate commissioner at this stage would amount to collection of 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 **19th day of September 2024**.

District Munsif,
Vadipatti.

Petitioner side witness: Nil

Petitioner side documents:

1.	Patta No.1176 and 1170
2.	Death Certificate, dated 24.06.2019
3.	Legal Heir Certificate, dated 20.07.2019
4.	Death Certificate, dated 18.06.2022
5.	Legal Heir Certificate, dated 11.08.2022
6.	Sale deed, dated 01.10.2022
7.	Sale deed, dated 01.10.2022
8.	Patta No.2210 and 2211
9.	Kist receipt
10.	Adangal
11.	Encumbrance Certificate
12.	F.I.R.
13.	Photograph
14.	Photograph
15.	Complaint

Respondents side witness and documents: Nil

District Munsif,
Vadipatti.

DISTRICT MUNSIF COURT
Vadipatti
~~Fair Order~~/Draft Order
IA. No.02/2023
In
O.S. No.142/2023
Date : 19.09.2024