

IN THE COURT OF THE DISTRICT MUNSIF-CUM-JUDICIAL
MAGISTRATE, KOTAGIRI.

Present: A.VANITHA. M.S.W., L.L.B.,
District Munsif-cum-Judicial Magistrate, Kotagiri
Dated this 9th day of September 2022, Friday.

I.A.No.03/2020

in

O.S.No.45/2020

1. M. Halan

2. M. Dharuman

3. D. Mani

.... Petitioner/Plaintiff

Vs.

1. R. Ravindaran

2. R. Rajendran

3. R. Jayagundan @ Jayaraman

4. Kanchana

5. K. K. Senthil

....

Respondents/Defendants

This petition coming on this day for final hearing before me in the presence of Thiru. T.K. Mathan, Advocate for the petitioners/Plaintiffs and Thiru. K.H. Dharman, Advocate for the respondents 1 and 4, and Thiru J. Sivakumar respondent 5 and upon hearing the arguments and upon perusing all the material records and having stood over for consideration, till this day, this court delivered the following:-

ORDER

1. This petition is filed Under order 26, rule 9 of CPC to appoint an advocate commissioner along with help of qualified surveyor and to pass further orders.

Gist of the petition :

2. The petitioner is the plaintiff in the suit. The petitioner has filed the suit for relief of declaration that the petitioners are the absolute owner of A and B schedule mentioned properties and for declaration that C schedule Property is common front yard for petitioner and the respondents.

3. The petitioner states that petition A and B schedule of properties are situated R.S.No.913/59 and 'C' schedule property situated in Rs.No.913/55. The 'C' schedule property is situated in R.S.No.913/55, which is a common front yard for both the petitioner/respondent. The villagers also use this space for all common purposes such as marriages, funerals, festivals as their right of way. On 15.10.2020, the respondents 1 to 4 suddenly claimed the A,B,C, Schedule of properties as their own and attempted to put up a septic tank and toilet in A and B schedule properties. The respondent illegally dug up a pit in front of the residence of petitioner in R.S.No.913/59. The respondents made unlawful attempts to put up a toilet room in 'B' Schedule of the properties in a small space measuring 4 feet length and 2 1/2 breath of western side of house bearing Door

No.19/39A. The respondents have got no right to make any structural alterations in 'C' schedule property. Hence it is essential to not down the physical features of the suit property with the help of qualified surveyor.

The crux of the counter statement filed by 1st respondent and adopted by 2,3,4 respondents is as follows :

3. The petition is false, frivolous and not maintainable. The respondent admitted to appoint advocate commissioner. But the advocate commissioner, do not visit the suit property to prove the possession of the suit property. The respondent did not raise any objection for appointment Advocate commissioner other than question 4, to note down the possession in the suit property.

4. Heard both sides.

5. Admittedly the petitioner has filed the suit for relief of declaration that 1st plaintiff is the owner of A and B schedule property and 'C' schedule property is common for petitioners and respondents. The petitioner comes with a plea that the respondents are trying alter the superstructure of 'C' schedule property and sought for appointment of advocate commissioner. However, the respondent comes with a contention that the advocate commissioner cannot appointed to look into the possession, and for all other aspects the commissioner can be appointed.

6. It is pointed out that the respondents has not raised objection for

appointment of advocate commissioner, only to find out the possession disputed for appointment of advocate commissioner. It is a settled that, the issue of possession is to decided only on the basis of evidence.

7. Here in this case, the petitioner put up a plea, that the respondents are trying to alter the super structure and also both parties as are comes with rival claim. In such a case, in substance of construction or superstructures in the suit property and parties claiming dispute regarding the property, the advocate commissioner can be appointed with qualified surveyor to measure the suit property and would not cause prejudice to the parties.

8. On considering the factum of the case, the appointment of advocate commissioner with qualified surveyor in the present case is vital, to identify the actual position of dispute property. Therefore in view of rival averment made by parties and in view of the fact on record, appointment of advocate commissioner with qualified surveyor is to measure the properties is essential to ascertain the disputes involved between the parties, and this court is inclined to allow the petition to note down the physical features of the suit property along with help of qualified surveyor. Since the issue of possession is to be decided only on basis of evidence this petition is allowed only to note down the physical features of the suit property.

ORDER :-

Sl.No.	ORDER
1	As a result, this petition is allowed.
2	Advocate Mr. N.H.Dharmalingam is appointed as Advocate commissioner, to note down physical features in and around the suit property along with the help of qualified surveyor.
3	The advocate remuneration is fixed as Rs.6000/-. The advocate commissioner is directed to issue prior notice to both parties before this visit.
4	For Commissioner report and plan Call on 14.10.2022

Pronounced by me in open court, this the 9th day of September 2022.

District Munsif-cum-
Judicial Magistrate,
Kotagiri.

Both side witnesses and documents :

Nil

District Munsif-cum-
Judicial Magistrate,
Kotagiri.