

IN THE COURT OF SUBORDINATE JUDGE, KEERANUR

PRESENT : Thiru.C.Rajesh,B.A.B.L.,

Subordinate Judge, Keeranur.

Thiruvalluvar Aandu 2054, Subakiruthu Varudam Panguni Thingal 6th Day

Monday the 20th day of March 2023

CNR.NO. TNPD17-000562-2022

IA 1/2023 in IA 116/2022 in OS 285/2022

C.Chandrasekaran . . . Petitioner/1st respondent/1st defendant

/Vs/

Thiru.D.Vaidyananthan . . . Respondent/Petitioner/Plaintiff

This petition came up for final hearing before this court on 14.03.2023 in the presence of Mr.M.Rethinam, Advocate for Petitioner/1st respondent/1st defendant and Mr.Rameshbabu, Advocate for Respondent/Petitioner/Plaintiff and upon perusal of entire material records and upon hearing both side and having stood over for consideration till this day, this court hereby delivered the following..

ORDER

This petition has been filed by the petitioner under Order 26 Rule 9 of CPC to reissue the commission warrant to the advocate commissioner to measure the suit property with the help of District Surveyor and VAO.

The gist of the petition is as follows:-

1. The petitioner is the 1st defendant in the suit. Already an Advocate commissioner was appointed and he measure the S.Nos. 45/5B, 45/5D with the help of Surveyor and VAO and he filed his report on 19.12.2022. Despite request made to the Advocate commissioner and Surveyor to measure the entire extent of 1739 Sq.fts as per the sale deed dated 29.08.1988. But the Surveyor did not accept the request and

he measure the properties approximately and fixed the boundary points. The advocate commissioner did not correlate the sale deed dated. 17.01.1985 and 29.08.1998. Hence it is necessary to reissue the commission and direct the commissioner to locate and measure the S.Nos. 45/5E, 45/5D with the help of District Surveyor.

The gist of the counter is as follows:-

2. This petition is not maintainable. The respondent has no objection to reissue the commission warrant with the following instructions. Direct the commissioner to measure the properties by correlating the title deeds and revenue records. To take measurement from the undisputed survey stone situated near by the suit property. Direct the commissioner to file separate plans. Also direct the commissioner to measure the property by correlating sale deed dated 05.02.1975 and gift deed dated. 05.08.2020.

3. Neither oral nor documentary evidence adduced either side.

4. The point for determination is, **Whether this petition is to be allowed or not?**

5. The suit has been filed the relief of declaration and recovery of possession. Already an Advocate commissioner was appointed to measure the suit property. Accordingly the Commissioner has measured the properties and filed his report on 19.12.2022. Aggrieved by the Commissioner report the petitioner come forward with this petition for reissue of commission. The respondent's counsel states no objection to reissue the commission warrant whereas he made some requests before this Court to direct the Commissioner while measuring the suit property. Since both parties agreed to reissue the commission warrant this Court is inclined to allow this application.

In the result,

Accordingly, Advocate Mr. A.Thirunavukarasu, is appointed as an advocate commissioner. The commissioner is directed to issue notice to both parties and inspect the suit properties and measure the same with the help of VAO and District Surveyor by correlating the documents produced by either side and file a detail report with plan. The remuneration of the Commissioner is fixed as Rs.6000/-. Both parties are directed to bear the commissioner fee equally. For report and plan 12.06.2023.

Dictated to the Typist, and typed by her, corrected and pronounced in open court, on this the 20th day of March 2023.

Subordinate Judge,

Keeranur

Petitioner side witnesses and documents:- Nil.

Respondent side witnesses and documents:- Nil.

Subordinate Judge,

Keeranur