

IN THE COURT OF THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
RANIPET

PRESENT: Thiru.D.Naveen Durai Babu, B.A.,B.L.,L.L.M.,
District Munsif cum Judicial Magistrate,
Ranipet.

Tuesday the 13th day of August 2024

I.A.NO.1/2024
IN
O.S.NO.49/2022

Shanthi

...Petitioner/Plaintiff

/Versus/

President
Kadppanthangal Panchayath

...Respondent/Defendant

This Petition is coming for hearing before me on 13.08.2024 in the presence of Tr.R.Nithiyanandam, Counsel appearing for Plaintiff and Tr.A.G.Selvaraj, Counsel appearing for defendant and upon hearing both side arguments and on perusal of entire case records having stood over for consideration till this day, this Court has passed the following:-

ORDER

1. Brief averments in the petition:

According to the petitioner, she is respondent in I.A.No.1/2023 which has been filed for appointment of Advocate commissioner. Further she would state that she is the plaintiff in OS.No. 49/2022. The suit is filed against the respondent/defendant for the relief of permanent injunction. During the pendency of suit, the respondent herein filed an application for appointment of Advocate Commissioner in I.A.No.1/2023 as referred supra. According to the petitioner, Advocate commissioner did not inspect the suit property in Survey No. 134/1A1 and also its boundaries. The above said petitioner would further state that she made her objections at the time of inspection itself. Further petitioner would state that suit

property was not measured as per the measurements in the document and only if the said property is measured as per the document it will come to light that petitioner is in enjoyment of 96 1/4 cents in survey no. 134/1A1 in Kadappanthangal village. Therefore, petitioner would pray for directing the Advocate Commissioner to revisit suit property and file a report.

2. Brief averments in the counter :

On the other hand, Respondent/Defendant would strongly object for the application seeking the intervention of this court for a denovo inspection by the advocate commissioner. According to the respondent, the petition is not at all maintainable. According to the respondent, advocate commissioner inspected the suit property along with taluk surveyor and a report was filed by the commissioner. Already objections were filed by the petitioner's counsel to the inspection and the same got recorded. Further petitioner cannot seek for revisit unless the commissioner report is set aside. On the whole respondent would pray for dismissal of the petition.

3. Point for consideration:

Whether the petition has to be allowed or not?

According to the petitioner, Advocate commissioner has not inspected the property based on the document, only if the commissioner inspects the property, the factum that petitioner is in possession of 96 1/4 cents in Survey No. 134/1A1 of Kadappanthangal village will come to light. On perusal of records, admittedly this court appointed an advocate commissioner in I.A.No.1/2023 and as per the terms of warrant, commissioner was instructed to inspect the suit property and note down its physical features with the help of qualified taluk surveyor. Accordingly, on receipt of the advocate commissioner warrant, commissioner inspected the property and filed the report. It is the case of the petitioner that property was not measured as per the sale deed standing in the name of the petitioner.

It is also pertinent to point out that commissioner report cannot be used to marshal evidence in support of a party's case. Further there is no prayer as to

scrapping of the commissioner report hither to filed. When such prayer is not available in the petition, the relief sought by the petitioner for revisit of advocate commissioner cannot be entertained accordingly, for the reasons referred supra, this court finds that petitioner has not made out a case.

Accordingly, this petition stands dismissed.

Dictated to stenographer directly, typed in her computer corrected and pronounced by me in the Open court on 13th day of August 2024.

Sd/-*****

District Munsif cum Judicial Magistrate,
Ranipet.

Petitioners side Witnesses and Exhibits:- -NIL-

Respondents side Witnesses and Exhibits:- - NIL -

Sd/-*****

District Munsif cum Judicial Magistrate,
Ranipet.