

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM  
PRESENT: Thiru. A. M. Ravi, B.A., B.L.,  
II Additional District Judge, Salem.

Friday, the 11<sup>th</sup> day of August 2023

I.A.No.3/2022

in

O.S. 291/2021

1. Kuppusamy

2. Allirani

... Petitioners/ Defendants

/Vs/

1. R. Kasthuri

2. G. Venkatesan

3. V. Hemamalini

4. V. Keerthana

5. G.V. Rajeshkumar

Rep by his Power of

Attorney R. Gangadharan

... Respondents/ Defendants

This petition is taken on file on 22.09.2022 and came up before me on 25.07.2022 for final hearing in the presence of Thiru. S.Rajaram, P. Anbarasu, Advocates for Petitioners, of Thiru.J. Ferozz, Advocate for the Respondents. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

### **ORDER**

The Petitioners / Plaintiffs filed a Petition under Order XXVI Rule 9 of C.P.C. to appointing a Commissioner and order him to visit the suit properties and note down the physical features and to draw a plan to scale with aid of a qualified Surveyor in accordance with documents of title and patta relating to the suit properties and submit his report and plan.

**2. The Summary of the averments in the petition filed by the 1<sup>st</sup> Petitioner / Defendant and on behalf of the 2<sup>nd</sup> petitioner is as follows:-**

The Petitioners are the Defendants in this suit. The Respondents / Plaintiffs filed a suit for Declaration and consequential relief of Permanent injunction against the Petitioners / Defendants. The 1<sup>st</sup> item of the petition mentioned property is the suit property, and the 2<sup>nd</sup> item of the suit property originally belonged to the 1<sup>st</sup> Petitioner's mother Seerangayee by way of registered sale deed dated 19.03.1973. Subsequently, the said Seerangayee executed a registered power of attorney deed in favour of the 1<sup>st</sup> Petitioner and relating to the 2<sup>nd</sup> item of the petition mentioned property on 27.03.1997. Based on the Power of attorney the Petitioner executed a sale deed in favour of the 2<sup>nd</sup> Petitioner on 18.06.1997. Then the Petitioners / Defendants are possession and enjoyment of the said property from 1975 and after demise of 1<sup>st</sup> Petitioner's mother they are possession and enjoyment of the said property till now. The 1<sup>st</sup> Petitioner's mother Seerangayee had constructed three tiled houses in the 2<sup>nd</sup> item of the petition mentioned property. The said house tax receipt, EB connection and other revenue records are in the name of the Seerangayee. The suit property is not in the location in the physical. The description of the property in the suit is entirely wrong.

The Respondents 1 to 4 and their father Gurumoorthy are not possession of the suit property at any time. The Respondents are not the owner of the suit property. The 2<sup>nd</sup> item of the petition mentioned property is situated southern side of the suit property. After filing the suit, the 4<sup>th</sup> Respondent had lot of treble to the petitioner's enjoyment of the 2<sup>nd</sup> item of the petition mentioned property. The suit property and the petitioner's property are difference. Hence, this petition.

**3. The Summary of the averments in the counter statements filed by the Respondents / Plaintiffs are as follows:-**

It is not correct to say that the 2<sup>nd</sup> item of the petition mentioned property in whole absolutely belongs to the Seerangayee W/o. Panchappan. The said Seerangayee has purchased the property with an extent of 836 sq. feet of land கிழமேலடி வடபுறம் 50 அடி, தென்புறம் 61 அடி, கிழபுறம் 11.8 அடி, மேற்கு புறம் 16.8 அடி இந்தளவுள்ள 836 சதுரடி மட்டும். Further the Respondents / Plaintiff denied the possession and enjoyment of the 2<sup>nd</sup> item of the property and other allegation in the petitions. The Petitioners have not stated clearly for what purpose they have filed for collection of evidence. It is settled portion of law is that the Commissioner cannot be appointed to locate who are residing in the suit property. There is no need to measure the

property with the help of Surveyor in accordance with the documents of the title and patta relating the suit property. There is no merit in this petition and the petition has to be dismissed in limine.

4. Both side no oral evidence adduced and no documents marked as an Exhibit.

5. Both sides arguments heard.

**6. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not?**

7. The Respondents / Plaintiffs filed a suit for Declaration of right and title over the suit property and consequential relief of permanent injunction. Now the case stands posted for framing of issues. At this juncture the Petitioners / Defendant filed this application for seeking appointment of the commissioner to note down the physical features of the suit property and also the property mentioned in the petition which is belongs to the Petitioners/ Defendants, admittedly not the suit property.

8. The Respondents / Plaintiffs objection in their counter is that only with an intention to gathering evidence and protract the trial they filed this commission application and pray for dismiss this petition.

9. Considering the contention submitted by the both sides and on careful perusal of the case records it reveals that the Petitioners /

Defendants filed this application and submitted that the 2<sup>nd</sup> item of the petition mentioned property originally belongs to one Seerangayee W/o.Punchappan and subsequently the said Seerangayee executed a registered power of attorney in favour of the 1<sup>st</sup> Petitioner /1<sup>st</sup> Defendant and based upon the power of attorney the 1<sup>st</sup> Petitioner executed a sale deed in favour of the 2<sup>nd</sup> petitioner and they are in possession and enjoyment of the petition mentioned 2<sup>nd</sup> item of the property, admittedly which is not the suit property.

10. Actually the 2<sup>nd</sup> item of the petition mentioned property which is not a suit property, the Petitioner filed this application for seeking appointment of commissioner to prove his possession and enjoyment of the said property. It is settled portion of law is that the Commissioner should not be appointed to prove the possession of the property and also for gathering evidence commissioner should not be appointed. In this petition the Petitioners / Defendants seeking appointment of the Commissioner only to prove the possession of the property mentioned in the petition which is not the suit property. The Respondent / Plaintiff filed a suit for declaration of right and title over the suit property, for which appointment of the commissioner and to note down the physical features will not anyway helpful to this Court to decide the main issues in

this case. Hence, there is devoid of merit in this application. Hence, this petition is dismissed.

**IN THE RESULT:-**

This petition is dismissed accordingly without cost.

The order dictated to Steno-typist, transcribed by her, corrected and pronounced by me in the open Court, the 11<sup>th</sup> day of August 2023.

**II Additional District Judge,  
Salem.**

**APPENDIX :**

**List of Petitioner side witnesses : NIL**

**List of Petitioner side Documents : NIL**

**List of Respondent side witnesses : NIL**

**List of Respondent side Documents : NIL**

**II Additional District Judge,  
Salem.**