

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
PRESENT : Thiru. G.SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem**

Friday, the 26th day of April, 2024

I.A.No.6/2023 in O.S.No.313/2019

1. Arun Rathinavel
2. S.R.Surya

..... Petitioners / Plaintiffs

/ Versus /

1. State of Tamil Nadu,
Rep.by District Collector,
Salem – 636 001.
2. State of Tamil Nadu,
Rep. by Secretary to the Government,
Local Administration, Fort St. George,
Chennai – 600 001.
3. State of Tamil Nadu,
Rep. by Revenue Divisional Officer,
Sankari.
4. Mc Donald Choultry Panchayat Union,
Rep. by its Commissioner / Block Development Officer,
Mc Donald Choultry, Sankari Tk, Salem Dt.
5. Ernapuram Village Panchayat,
Rep.by the Executive Officer,
Ernapuram Panchayat,
Sankari Tk, Salem Dt.
6. Sampooram (Died)
7. Selvi
8. Kaliammal
9. Chinnammal
10. Raja Gounder
11. Muthu Kumar
12. Pushpa

..... Respondents / Defendants

This Petition coming on this day for hearing before me in the presence of Tr.K.T.Rajan, Advocate for the Petitioners and Tr.A.Madhanmohan, the Government Pleader for Respondents 1 to 5 and M.E.Thasleen Sulthana, Advocate for Respondents 7 to 12 and Respondent No.6 is dead and upon hearing the arguments of the Learned Counsel for both sides and upon perusing the records and having stood over for consideration till this day, this Court delivers the following

ORDER

Plaintiffs in O.S.No.313/2019 are the Petitioners in the present application, which has been filed under Order 26 Rule 9 & 10 and Sec.151 C.P.C. praying this Court to appoint an Advocate Commissioner with a direction to him to inspect the Suit properties with the help of Taluk Surveyor/ qualified Surveyor, conduct a Survey and to file a Report with Plan drawn to scale.

2) According to the Petitioners, they have filed the above Suit seeking delivery of vacant possession of the Suit Properties; that Respondents 1 to 5 have unlawfully encroached upon a portion of Land that is comprised at S.No.243/3 of Mac Donald Choultry, Ernakulam Village and that had led the Petitioners to institute the above Suit and that the correct location of the encroachment by laying a road and also by constructing a Library Hall, Bore well and Bus Shelter are relevant facts for deciding the issues involved in the above Suit and therefore, an Advocate Commissioner may be appointed for making a Local inspection.

3) The 4th Respondent has filed his Counter, which is adopted by Respondents 1, 3 and 5, opposing the above Application.

4) Learned Counsel for Respondents 7 to 12 has endorsed no objection today.

5) Now, the Point that arises for consideration is that Whether Advocate Commissioner could be appointed as prayed for by the Petitioners?

Point

6) Heard both sides and perused the records.

7) Admittedly, the Petitioners/ Plaintiffs have filed the above Suit seeking the relief of Declaration of Title and also for delivery of possession of the Suit properties. In fact, in the Plaint description of properties, the Petitioners have described the portions of the Suit properties, that are allegedly encroached by the Respondents 1 to 5. According to the Petitioners, Respondents 1 to 5 have made encroachments by way of constructing a Library Hall, laying a road, sinking a Bore well and also by constructing a Bus Shelter.

8) Considering the nature of the relieves sought for in the Suit, nature of the alleged encroachments said to have been made by Respondents 1 to 5, this Court is of the considered view that appointment of Advocate Commissioner as sought by the Petitioner is essential.

9) If an Advocate Commissioner is appointed as prayed for by the Petitioners and he files a report, after measuring the disputed properties, the same would be highly helpful for this Court to decide all the controversies involved between the parties and the same will minimize adducing of much oral and documentary evidence.

10) In such view of the matter, this Court is inclined to appoint Advocate Commissioner in this application, by rejecting the stand of the contesting Respondents that this Petition has been intended to collect evidence, which is not permissible under law.

In result,

- i) the above application is allowed. Advocate **Tr.K.Yuvaraj,** **Enroll.No.898/2010,** is appointed as the Advocate/ Commissioner in this Application.
- ii) The Learned Advocate Commissioner is requested to visit the Suit Properties, after issuance of notice to both parties, measure the same with the help of a Surveyor, measure the disputed properties and to file his Report along with Plans drawn to scale.

- iii) His remuneration is fixed as **Rs.7,000/-** and the Learned Petitioner Counsel is directed to deposit the said amount before this Court immediately.
- iv) The Learned Advocate Commissioner is at liberty to receive the said remuneration after completing his work.
- v) Advocate Commissioner's Report and Plan by 28.06.2024.
- vi) The Office is directed to issue the Commissioner's Warrant after the deposit of the Advocate Commissioner's fees.

Dictated to the Steno Typist, transcribed by her in the computer, corrected and pronounced by me in open Court, this the 26th day of April, 2024.

III Additional District Judge,
Salem.

Petitioners Side Witness and Documents : NIL

Respondents Side Witnesses and documents : NIL

III Additional District Judge,
Salem.