IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, ATTUR

PRESENT : **Tmt. D. JANSIRANI, MBA., LLM.,**
ADDITIONAL DISTRICT MUNSIF, ATTUR.

Friday, 1st day of August 2025

I.A. No. 4/2024 in I.A. No. 2046/2015 in

O.S. No. 374/2015

CNR No. TNSA13-000224-2015

Karuppannan . . . Petitioner/Respondent /Defendant

/Versus/

Selvam . . . Respondent/Petitioner/Plaintiff

This petition is came up for final hearing before me on 16.07.2025 in the presence of Thiru.A.S.Madheswaran Advocate for the Petitioner/Defendant and Thiru.L.Dhayaln, Advocate for the Respondent/Plaintiff upon hearing the enquiry on either side, and upon perusing the materials records, and having stood over till this day for consideration, this date, this court delivers the following,

ORDER

The Petitioner/Defendant has filed this petition u/o. 26, Rule 10 and Section 151 of CPC praying to pass an order to scrap the Commissioner's report and plan filed in the petition I.A.No.2046/2015.

2. Brief averments made in the petition :

The Petitioner / Defendant is the respondent in the above said I.A.No.2046/2015. He is a poor agriculturist and met with an accident and he is bed ridden at present.

When the Advovate commissioner measure the suit property, along with the concerned surveyor, the surveyor openly accepted that he was not able to measure the suit properties accurately, on the basis of the concerned FMB plans, before the lunch and sought for giving allowance for 3 feet, in the boundary of the concerned suit properties.

Subsequently, instead of measuring the suit properties, the concerned surveyor measured his property and came to the conclusion that there was difference of 5 feet, in the boundary and the 5 feet allowance had to be given, regarding his measurements, which was strongly objected by his counsels.

Without accurate measurements and incomplete of the warrant of the commission, inspite of the request made, by his counsels, for complete the measurement and clarify the measurements, in another day and at the time of sunset, the commissioner came to a conclusion that the measurements were sufficient and no need to come again.

The measurements of the surveyor was not correct and based on such measurement, the commissioner's report and plan was filed, if the said commissioners report is not scrapped, he will be put to great hardship and irreparable loss, which cannot be compensated, by any means.

It is therefore just and necessary, that the report and plan filed by the commissioner, in the above said petition may be scrapped. Hece this petition.

2. **Brief averments made in the counter**

The respondent / Plaintiff objected the petition that this petition is not maintainable and the averments stated in the affidavit are false and denied. The petitioner never come to the court with clean hands. The objection filed by the petitioner regarding the commission petition is not far and misunderstanding of their observation.

The commissioner measures the suit property along with surveyor on 09.07.2022. On that day itself the measurement was completed, it was well known to the petitioner. The petitioner never filed any objection or petition for should not filed the commission report or court cannot received the commission report.

The petitioner is not entitled to this petition. This petition is not in proper form. He want to drag on the proceeding hence the petitioner was filed this petition. He is not entitled any relief as per law. This petition is baseless and not maintainable as per law. Hence prayed to dismiss the petition on the ground of cruelty with heavy cost.

3. ***Now the point for consideration is Whether the petitioner/Defendant is entitled to get the relief prayed in the petition?***

4. Both side argument heard. The petition, counter and records are carefully perused.

The suit has been filed by the plaintiff for the relief of declaration and mandatory injunction in respect of the suit properties bearing Survey Nos. 111/10, 111/13, 111/12A, and 111/12B. The defendant owns lands in the adjoining Survey Nos. 111/5C, 111/9, 111/6, 111/7, and 111/3C, located on the western side of the suit properties. Thus, the case is essentially a boundary dispute, wherein precise measurement and correct demarcation of property lines are vital for adjudicating the issues involved.

In I.A. No. 2046/2015, the plaintiff sought appointment of an Advocate Commissioner under Order XXVI Rule 9 CPC, directing him to measure the suit property with the assistance of a qualified surveyor and file a report along with a rough sketch and survey plan, and to note down all existing physical features.

The Advocate Commissioner conducted the measurement on 09.07.2022 and subsequently filed the report and the surveyor's plan. However, on scrutiny, it is evident that the Commissioner failed to file the “rough sketch” as specifically mandated in the warrant of commission and in the court’s order.

In a boundary dispute such as this, the absence of a rough sketch impairs the completeness of the Commissioner's report. The rough sketch is an essential component, serving as a visual aid in understanding the position of the suit property vis-à-vis the adjoining properties, and in identifying any encroachments or disputes regarding the boundaries.

The petitioner /Defendant filed the objection to the report. Since the earlier Advocate commissioner report not filed along with rough plan the report of the Advocate commissioner cannot be considered as a complete one. Moreover it is important to decide the case between the plaintiff and the defendant which involves boundary disputes. Hence in the interest of justice this petition is allowed and the report filed by the Advocate commissioner in IA.No.2046/15 is hereby scraped.

In the result,

This petition is allowed. No cost.

Dictated to the Steno typist directly, typed by her, corrected and pronounced by me in the open court on this the 1st day of August 2025.

D JANSIRANI

Digitally signed by D JANSIRANI
Date: 2025.08.01 18:28:37 +0530

Additional District Munsif
Attur

List of Documents and Witnesses on Both side:

Nil.

D JANSIRANI

Digitally signed by D JANSIRANI
Date: 2025.08.01 18:28:44 +0530

Additional District Munsif
Attur

A.D.M. Court, Attur.
DRAFT / FAIR ORDER
I.A. No. 4/2024 in
I.A. No. 2046/2015 in
O.S. No. 374/2015
Dated : 01.08.2025