

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, ATTUR

PRESENT : **THIRU. G. YUVARAJ, M.A., M.L.,**
PRINCIPAL DISTRICT MUNSIF, ATTUR.

Tuesday, the 7th day of June 2022.

I.A. No. 2 of 2020 in O.S. No. 359 of 2014
(CNR No. TNSA-1300-245-2014)

The Panchayat President,
Kalarampatti.

.. Petitioner / Defendant

Vs.

Perumal

.. Respondent / Plaintiff

This petition came up for final hearing before me on 26.04.2022 in the presence of Mr. P. Sivarajan, Advocate for the Petitioner / Defendant and Mr. V. Rajindra Magajan, Advocate for the Respondent / Plaintiff 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 9 of CPC praying to appoint an Advocate Commissioner with a direction to inspect the suit property and to measure the same with help of qualified surveyor and to note down the North-South cart track running across the suit property on its western side and other properties and to measure its width and to file report and plan.

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2. **Brief averments made in the petition and affidavit:** The Petitioner / Defendant in his affidavit had stated that, the revenue records in respect of the suit property are stands in the name of the Respondent / Plaintiff and on the western side of the suit property, a North-South cart track is running from Kalarampatti to Pethanayakkanpalayam village across the suit property and it passes through Government poromboke land in Survey No. 114/7 and other survey numbers and then reaches Rasipuram main road and the said cart track is width about 12 feet and it is in usage of more than 50-60 years and after filing the suit, the Plaintiff had shortened the width of the said cart track and annexed the same with his land and existence of the said cart track is also mentioned in the FMB and since the Respondent had shortened the width of the cart track, the general public are facing difficulty to take their vehicles and even in the Plaintiff's sale deed, existence of the cart track is mentioned and by suppressing these facts, the Plaintiff had filed the above suit. After filing this suit, on 02.11.2014, the Plaintiff had shortened the width of the public cart track and annexed the same with his patta lands and in respect of the same, on 02.11.2014, the then President had lodged a complaint before the Malliyakarai Police Station and the Police have advised the Respondent to restore the cart track to its original width, but till date, the respondent has not taken any steps to restore the cart track to its original width and hence, the Petitioner / Defendant had prayed counter-claim in the written statement and hence it is just and necessary appoint an Advocate Commissioner for the aforesaid purposes and thus filed this petition.

3. **Brief averments made in the counter filed by the Respondent / Plaintiff :** The Petition is not maintainable either in law or on facts. All the averments made in the affidavit are false. The Respondent / Plaintiff had

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purchased the suit property through the registered sale deed dt. 19.04.1983 and on the same date, his wife Palaniammal also purchased an extent of acre 1.00 cents in the suit survey number with specific boundaries. Ever from the date of purchase, the Respondent and his wife are in actual possession and continuous enjoyment over the suit property and property of Palaniammal without any hindrance whatsoever. The Respondent and his wife enjoying the properties as their vendors and their predecessors enjoyed. The alleged cart track mentioned by the Petitioner is never in existence at any point of time and the same is never enjoyed by the people residing in the suit locality and the boundaries are clearly mentioned in the sale deed dt. 19.04.1983. Even prior to 1983, no cart track was in existence in Survey No. 114/6 and hence the question of encroachment of the same does not arise. The Petitioner has not produced any document to show that the alleged cart track was and is in existence in the suit property and the Petitioner attempted to form a underground pipeline in the suit property by damaging the standing crops in the month of October 2004 raised by the Respondent and hence on 10.10.2014, he preferred a complaint before the Malliyakarai Police and the Police have enquired the Respondent and requested him to allow the Petitioner to underground pipeline in the foot pathway and also warned the Petitioner nor to damage the standing crops raised in the suit properties and hence the Respondent allowed the Petitioner to lay an underground pipeline in the ridge of the suit property and due to the local body election was held in the year 2014, the Petitioner was developing enemical attitude against the Respondent with a view to give trouble and pinpricks to the peaceful possession and enjoyment of the suit property and since the Respondent is absolute owner of the suit property, neither the Petitioner nor others have any manner of right to claim anything in the suit property and hence prayed to dismiss the petition.

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4. ***Now the point for consideration is; Whether the petition filed by the Petitioner / Plaintiff for appointment of an Advocate Commissioner is to be allowed or not?***

5. No oral and documentary evidence have been adduced by either side.

6. Heard both. Perused records. On perusal of the records, it comes to know that, the Respondent / Plaintiff had filed the above suit against the Petitioner / Defendant herein for the relief of permanent injunction restraining him from interfering with his peaceful possession and enjoyment of the suit property situated in Survey No. 114/6, extent acre 0.75 cents from and out of acre 1.75 cents within four boundaries. On 02.06.2015, the Petitioner / Defendant had filed his written statement along with counter-claim. In the written statement, by way of counter-claim, the Petitioner / Defendant had prayed the following reliefs.

- 1) *to declare the suit cart track is common cart track,*
- 2) *to pass a relief of mandatory injunction directing the Plaintiff to restore the suit cart track to 12 feet width, which was in existence,*
- 3) *to pass a relief of permanent injunction restraining the Plaintiff and his men from enjoying the suit cart track as common cart track.*

7. In the written statement and in the affidavit filed in support of this petition, it has been specifically stated that, a cart track in a width of 12 feet was running across the suit property, Survey No. 114/7 and other survey numbers and it finally reaches Rasipuram main road and the general public have no other access except the said cart track and the Respondent has shortened the width of

the said cart track and annexed the same with his patta lands and on both the directions of the suit property, a cart track in 12 feet width is in existence, but the Respondent / Plaintiff has annexed the cart track with his land and even in the sale deed of the Respondent / Plaintiff, existence of the cart track was mentioned and by suppressing the same, he has filed the present suit and hence prayed to appoint an Advocate Commissioner.

8. In the plaint, it has been pleaded that the Respondent / Plaintiff had purchased the suit property through the registered sale deed dt. 19.04.1983. The registration copy of the said sale deed was filed as Document No. 1 along with the plaint. In the said sale deed, boundaries for the suit property were mentioned as, “பாறைக்கும் கிழக்கு, வடக்கு, பெரியண்ணன் நிலத்திற்கும் மேற்கு, பழனியம்மாள் நிலத்திற்கும் தெற்கு”. Whereas, in the plaint suit schedule, boundaries are stated as, “ஒத்தையடி பாறைக்கும் கிழக்கு, வடக்கு, பெரியண்ணன் நிலத்திற்கும் மேற்கு, பழனியம்மாள் நிலத்திற்கும் தெற்கு”. ‘பாறை’ mentioned in the Plaintiff’s own sale deed is stated in the plaint as ‘ஒத்தையடி பாறை’, which discloses that the Respondent / Plaintiff wants to suppress some existing features in the suit property.

9. It is the specific defence of the Petitioner / Defendant that, 12 feet width cart track existing in the suit property is connecting the lands on the both sides of the suit property and the Respondent / Plaintiff had shortened the said width of the cart track and annexed the same along with his lands. When the defence of the Defendants are being so and the Petitioner / Defendant has also claimed counter-claim in respect of the disputed cart track, existence and width of the cart track has to be established.

10. Further, on the side of the Petitioner / Defendant, it is also contended that, on both side of the suit property cart track is still existing in 12 feet width and only in the suit property, its width has been shortened by the Respondent / Plaintiff and the same has to be measured. On the side of the Respondent / Plaintiff, it has been contended that, the suit property is absolutely belongs to the Respondent / Plaintiff and without any proper acquisition proceedings, even if any cart track is existing in the suit property, the same cannot be used by anybody else and hence strongly opposed to appoint Advocate Commissioner.

11. In the counter filed by the Respondent / Plaintiff, there is no any specific objection for appointment of an Advocate Commissioner. In the counter, it has been stated that, no such cart track is in existence and the suit property is the absolute property of the Respondent / Plaintiff. In the affidavit filed in support of this petition, it has been specifically stated the reason for appointment of Advocate Commissioner. Whiles, the Respondent / Plaintiff ought to raised his specific objections as to why the Advocate Commissioner should not be appointed. But, nothing was specifically objection. What are all stated in the counter filed in this petition are repetition to the Reply-Statement filed by the Respondent / Plaintiff. The same can be decided at the conclusion of the trial.

12. Further, when it is the specific defence of the Petitioner / Defendant that, the disputed cart track is in existence for more than 50 years, legally some rights are accrued to its users. Therefore, whether such rights are accrued or not or only after the acquisition proceedings, the cart track in the suit property can be enjoyed are the matter for adjudication in the main suit. As far as, merits in this petitions are concerned, since the Petitioner / Defendant, being the President of the Panchayat Board claimed relief by way of counter-claim in respect of the

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disputed cart track for the enjoyment of the general public, the existence, width, and the lands through which survey numbers the said cart track are passing through are necessary for proper adjudication of the suit relief and the relief claimed in the counter-claim. Though these facts can be proved by way or oral evidence, the report and plan of the Advocate Commissioner would be helpful to the court to minimize the oral evidence to be let in the suit. By appointing an Advocate Commissioner, no prejudice would be caused to the Respondent / Plaintiff, since he has got right to prove his case during the trial. Hence, this court is inclined to appoint an Advocate Commissioner as the same is essential for proper adjudication of the dispute in the suit and in the counter-claim.

IN THE RESULT, Advocate Thiru. S. Prabu is appointed as Advocate Commissioner. The Commissioner is directed to issue prior notice to both the counsels, inspect the petition mentioned property with help of the VAO and the qualified surveyor and note down the cart track if any passing through the suit property on its western side and other survey numbers and note down the width of the cart track in the suit property and other properties and file report and plan. The Advocate Commissioner may also take the videograph and photograph if necessary at the expense of the Petitioner. The Petitioner is directed to pay a sum of Rs.7,000/- to the Commissioner towards remuneration. Warrant will be issued on filing memo for receipt of remuneration. For report and plan. Call on 08.07.2022.

Directly typed by me in my Laptop, corrected and pronounced by me in the open court on this the 7th day of July 2022.

Principal District Munsif,

Attur.

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Annexure :

Petitioner side witnesses : Nil

Respondent side witnesses : Nil

Petitioner side exhibits : Nil

Respondent side exhibits : Nil

Principal District Munsif,

Attur.

P.D.M. COURT, ATTUR.

DRAFT / FAIR ORDER

in I.A. No. 2/2020 in O.S. No. 359/2014

Dated : 07.06.2022.

I.A. No. 2 of 2020

in

O.S. No. 359 of 2014

DATE : 07.06.2022 : Orders pronounced. In the result, Advocate Thiru. S. Prabu is appointed as Advocate Commissioner. The Commissioner is directed to issue prior notice to both the counsels, inspect the petition mentioned property with help of the VAO and the qualified surveyor and note down the cart track if any passing through the suit property on its western side and other survey numbers and note down the width of the cart track in the suit property and other properties and file report and plan. The Advocate Commissioner may also take the videograph and photograph if necessary at the expense of the Petitioner. The Petitioner is directed to pay a sum of Rs.7,000/- to the Commissioner towards remuneration. Warrant will be issued on filing memo for receipt of remuneration. For report and plan. Call on 08.07.2022.

P.D.M.

