

**IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE,
TIRUPPUR.**

PRESENT: Thiru.V.Breznev, M.A., L.L.M.,
Additional Subordinate Judge, Tiruppur.

திருவள்ளூர் ஆண்டு 2052, பிலவ வருடம், ஆடி மாதம் 31 ம் நாள்
Monday, the 16th day of August 2021

I.A.No.422/2020

in

O.S.No.36/2018

Mrs.Malarkodi by her power agent P.S.Dharmaraj ...Petitioner/Plaintiff

/ vs /

1. Mr.Sunilkumar

2. Mr.Sandeep Kumar

3. Mr.R.Rajeshkumar

..Respondents/Defendants

This petition is coming on 11.08.2021 for final hearing before me in the presence of Thiru.A.Chinnasamy, Advocate for the petitioner and Thiru.M.Murugesan, Advocate for the respondent and upon perusing the material records and having stood over till this day for consideration and this court delivers the following

ORDERS

The petitioner/plaintiff filed the present petition U/O.26 R 9 CPC to appoint a Court Commissioner to measure the property with the assistance of Surveyor.

02. The brief averments of the petition:

The petitioner has filed the suit for permanent injunction and recovery of possession of the B Schedule property. That the properties described in A Schedule property belonged to the plaintiff's father as his self acquired properties by virtue of sale deed dated 11.06.1965 with clear four boundaries measuring north-south 46 feet east-west 95 feet. The western side of the property belonged to one Muthusamy. Originally between the property of Muthusamy and petitioner's father, a 7 feet width sanitary lane etc., the said lane was not used by adjoining ownus. The petitioner's father acquired the said lane. Whiles in the year 2010, the petitioner had constructed a compound wall on the southern side of the house in which the petitioner has left 4 1/2 feet vacant space on the south of the said wall. The said portion has been described as B Schedule property. The respondents are recent purchaser of the properties and they have illegally encroached the suit property on 10.09.2017. The main dispute is regarding north-south of the suit property. Hence it is very much necessary to measure the suit property with the help of Taluk Surveyor. Hence this petition.

03. The brief averments of the counter:

The suit is filed in the year 2018 and the injunction application was disposed on merits. CMA filed by the respondent was also dismissed. CRP 1598/2019 preferred and orders of lower court was modified granting permission to the respondent to put up constructions leaving B schedule property. The respondents predecessor Jambulingam purchased the property on 11.05.1963 with the specific boundaries and measurements east-west 104 feet and north-south 45 feet. But the petitioner has relied on

the sale deed dated 11.10.1965. The petitioner has shown false and imaginary measurements over the suit property. The petitioner has no right over the suit properties on the basis of document dated 11.10.1965. There is no necessity to measure the suit properties with the Assistance of Surveyor. Hence this petition is liable to be dismissed.

04. Documents and evidences:

On behalf of the petitioner and respondent no oral and documentary evidences adduced.

05. Now the point for consideration is whether a Commissioner is appointed to note down the physical features and measure the property with the help of Surveyor?

06. The petitioner stated that his father purchased A schedule property by virtue of sale deed dated 11.10.1965 with specific measurements by measuring north-south 46 feet and east-west 95 feet. At the time a 7 feet width sanitary lane was existed between the petitioner's father's property and one Muthusamy. The petitioner's father was enjoying the whole property for a total of east-west 102 feet. The petitioner stated that the B schedule property is the encroached property which is illegally encroached by the respondents. On the other hand the respondents stated that they have got the earlier document over the petitioner's father's property. It is stated that as per the documents dated 11.05.1965, the defendant's predecessor Jambulingam purchased property east-west 104

feet and south-north 40 feet. Now the petitioner sought to appoint an advocate/commissioner to measure the property.

07. Since both the petitioner and respondent relying that they have got right over the B schedule property. It is also the dispute between the parties that encroachment of B schedule property. Therefore in order to ascertain measurement of the petitioner and respondent property and also measurement of encroached property, this Court is inclined to appoint an advocate/commissioner. This Court is of the view that If an advocate/commissioner is appointed, no prejudice will be caused to any party. Admittedly the respondent is not denied that the advocate/commissioner will collect evidence. Hence in the interest of justice and to meet out the ends of justice, this court is inclined to appoint an advocate/commissioner to note down the physical features and to measure the petition mentioned property with the help of Taluk Surveyor. The commissioner is directed to measure the property on the basis of title deeds and revenue records of both parties. Accordingly this petition is allowed.

***In the result,** this petition is allowed. Advocate Mrs.N.Tamilselvi, M.S.No.2487/2016 is appointed as an advocate/commissioner to note down the physical features and to measure the petition mentioned property with the help of Taluk Surveyor. The commissioner is directed to measure the property on the basis of title deeds and revenue records of both parties. A sum of Rs.10,000/- is fixed as remuneration and the same shall be paid by the petitioner at the time of inspection of the property. The commissioner*

is directed to file her report within 30 days from the date of receipt of the Commissioner Warrant. Call on 20.09.2021

Dictated to the typist by me directly and typed by her in the court computer and corrected and pronounced by me in the Open Court, this the 16th day of August-2021.

Additional Subordinate Judge,
Tiruppur

Petitioner's side evidence & documents : NIL

Defendants side evidences & documents : NIL

Additional Subordinate Judge,
Tiruppur