

**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, ஆவணி மாதம் 28 ம் நாள்
Monday, the 13th day of September 2021

I.A.NO.125/2021

in

O.S.No. 62/2021

Mrs.Jayanthi Petitioner/Plaintiff

/ Versus /

Mrs.Chitradevi Respondent/Defendant

This petition is coming on before me for final hearing on today i.e. 13.09.2021 in the presence of Thiru.P.Sakthivel, Advocate for the Petitioner and Thiru.G.I.N.Sirpi, Advocate for the respondent and upon perusing the material records and having stood over till this day for consideration and this court delivered the following.

ORDERS

This petition is filed by the petitioner/plaintiff U/O.26 R.9 & Sec.151 CPC to pass an order to appoint an advocate/commissioner to visit and note down the physical features of both item of petition mentioned properties with the assistance of Taluk Surveyor.

02. The averments in the petition is as follows:

The petitioner has filed this petition stating that the property mentioned in the petition was originally belonged to Loganathan and Balasubramaniam by virtue of Partition Deed dated 21.06.1978. The Power Agents of

Loganathan & Balsubramaniam sold the property to the petitioner east-west 72 feet, north-south 28 3/4 and north-south on west 36. 1/2 on 02.11.2009. Likewise the respondent had also purchased the same extent of land on 02.11.2009. It is found that the mistakes crept in the description of property. It is mentioned as Item-1A. Now the respondent started further construction including the item-1A which is belonged to the petitioner. Hence the petitioner has filed the suit for declaration, permanent injunction and mandatory injunction, recovery of possession. In order to better adjudication, a Commissioner may be appointed to measure the property with the help of Taluk Surveyor. Hence the counsel for the petitioner prays to allow the petition.

03. The averments in the counter statement is as follows:

This petition is false and unsustainable both in law and on facts of the case. It is false that mistakes crept in the documents, it is also false that the respondent encroached the petitioner's property. The petitioner very well aware of the measurement of the property purchased by him. Hence there is no need for appointment for commissioner to note down and measure the property. Hence the counsel for the respondent prays to dismiss the petition.

04. Points for consideration:

(i) whether an advocate/commissioner appointed to note down the physical features of the property and whether the petition to be allowed?

05. Answer to the point for consideration:

The petitioner is the plaintiff and has filed the suit for declaration, permanent injunction, mandatory injunction & recovery of possession. The petitioner has stated that he purchased the property on 02.11.2009 for an extent of 2349 sq.ft. The petitioner further stated that the respondent also purchased the property on the same extent on the same day. It is also the contention of the petitioner that due to the mistakes crept in the description of the property, the respondent taking advantage and started further construction and encroached the petitioner's property. Hence the petitioner sought for appointment of commissioner to note down and measure the property. The respondent has not specifically make any averments in the counter statement as to why an advocate/commissioner shall not be appointed.

5(1) Though the respondent does not make any averments, it cannot be the sole ground for allowing the petition, but the petitioner stated that there is a dispute with respect of measurement of the property and the respondent is encroaching the petitioner's property by putting up construction. The suit is also filed for recovery of possession. Hence in order to meet out the ends of justice, this Court is inclined to appoint an advocate/Commissioner. Accordingly this petition is allowed.

In the result, Advocate Mr.R.Tharun Visweswaran, M.S.No.2628/2019 is hereby appointed as Commissioner to note down the physical features of petition mentioned properties and measure the same with assistance of Taluk Surveyor. A sum of Rs.10,000/- is fixed as remuneration to the advocate commissioner and the same shall be paid by the petitioner to the Commissioner directly at the time of inspection of the property. The Commissioner is directed to inspect the property after giving

due notice to the parties and the Commissioner should file the report within 15 days from the date of receipt of the Commissioner Warrant. To file report and plan by 01.10.2021.

Dictated to the typist directly and typed by her in court computer and corrected and pronounced by me in the open court, this the 13th day of September 2021.

Additional Subordinate Judge,
Tiruppur.

List of Documents and Witnesses:-

1. Petitioner side : NIL
2. Respondents side : NIL

Additional Subordinate Judge,
Tiruppur.