

**IN THE COURT OF THE PRINCIPAL SUBORDINATE JUDGE,
TIRUPPUR**

Present:- Thiru. S.Ramachandran, B.L.
Principal Subordinate Judge,
Tiruppur.

Tuesday the 09th day of July 2024

I.A.No.06/24

in

O.S.No.71/2023

K.Lakshmi

... Petitioner / Plaintiff

//Vs//

1. M.Murugasamy
2. M.Muthusamy
3. M.Govindaraj
4. Mrs.Mahalakshmi
5. The Tahsildar
Office of the Tirupur South Taluk Office
6. The District Collector,
District Collector Office, Tirupur

... Respondents/Defendants

This Petition is coming on 07.06.2024 for final hearing before me in the presence of Thiru.N.Sundaravadivelu, Advocate for the Petitioner and Thiru.C.P.subramaniam, Advocate for Respondents 1 ,2 and 4 and Thiru.K.Basheer Ahamed, Government pleader for 5th & 6th Respondents and 3rd respondent remained exparte, upon

perusing the Petition, affidavit, counter statement and other connected material papers and having stood over till this day for consideration, this court made the following....

ORDER

The petitioner filed this petition Under Order 26 Rule 9 r/w Section 151 of C.P.C. to pass an order for appointment of an Advocate Commissioner with an advise to him to visit the suit property 403/1A, 1C, 1B1, 1B2, 1B3, 1B4, 1B5, 403 entirely more fully described hereunder measure the same with the assistance of the Taluk Surveyor and demark the boundary stones by verifying petitioner documents as well as the documents of the respondents 1 to 4 and also file a detailed report along with a sketch.

2. The Brief averments in the affidavit of the petition :

2.1 The petitioner filed the above suit against the respondents seeking the relief of permanent injunction and other reliefs. It is pertinent to note that in the Partition Deed the petitioner's mother namely Mrs.Chellammal was allotted only 1.19 ½ acres, whereas in the subsequent Exchange Deed. She was allotted to 1.28 acres in S.F.No.403/1 of Mangalam village all the concerned parties have given consent for the allotment and even they have also signed in the Exchange Deed. Now the respondents are disputing the allotment. In such circumstances, the respondents have no right to dispute the Exchange deed. However, the respondents are disputing the allotment of share.

2.2 The petitioner gave a representation to the Taluk Surveyor to measure the property and demark the boundary lines to the petitioner property, who in turn visited the property on 18.10.2022, measured the property, but he failed to demarcate and fix the boundary stones. Hence, the petitioner also gave a Police Complaint on 22.12.2022 and the Police Officials visited the suit property and advised both parties to seek remedy through Civil Court, as the dispute is of civil nature.

2.3 As there was no remedy from any of the Government Officials. The petitioner filed a writ before the Hon'ble High Court of Judicature at Madras and the Hon'ble court on 31.01.2023 passed an order in W.P. No 2292 of 2023. By directing to the 3rd respondent to consider the application of the petitioner dated 17.10.2022 and to do the needful to conduct the 403/1c survey of the land in question within a period of six weeks from the date of receipt of a copy of this order. Thereafter also, though the Taluk Surveyor was taken to the suit property for the purpose of measurement and for demarcating the boundary stones, during which time, the Taluk Surveyor has taken protection of the police. But, the respondents 1 to 4 restrained the Taluk Surveyor to carry out his work fully.

2.4 It is pertinent to note that the 1st respondent refused to receive the summons sent from the Hon'ble High Court and even the respondents 1 to 3 refused to co-operate with the Taluk Work Surveyor to carry out his work completely and fully. At this juncture, it is pertinent to note that if the suit property and other properties are measured with the documents available with the parties concerned as also with the TSLR available with the concerned Taluk Office, petitioner valuable rights in the suit property will be defeated. Further,

even in this application, if this court appoints an Advocate Commissioner for measurement of the suit property with the assistance of the Taluk Surveyor. The petitioner apprehend that the respondents may not allow them to measure and fix the boundary lines. In such case also, petitioner rights in the suit property will be defeated.

2.5 It just and necessary that this court may be pleased to pass an order directing the Inspector of Police, Mangalam Police Station, Tiruppur District, to provide necessary protection to the Advocate Commissioner, as well as to the Taluk Surveyor to execute the warrant of commission that may be issued to the Advocate Commissioner, for the purpose of visiting and measuring the 403/1A, 1C, 1B1, 1B2, 1B3, 1B4, 1B5, 403 area entirely which is the suit property and that of the properties of the respondents 1 to 4 and fix a boundary stones as far as suit property is concerned. Hence, this petition.

3. The Brief averments in Counter Statement for the 2nd Respondent adopted by the respondents 1 to 4:

3.1 The petition is false, frivolous, vexatious and unsustainable both in law and on the facts of the case. The respondent states that schedule of the suit property entirely belongs to this respondent. The petitioner has no rights over the said C schedule of the property. The Schedule of property is vague. The petitioner is not entitled for Acres. 1.28 in S.F.403/1 at any point of time. The petitioner is not entitled for “C” schedule properties and petitioner’s mother Mrs.Chellammal have never been allotted 8 ½ cents exclusively.

3.2 There is no such Document No.301/1985 as mentioned in Schedule of property. The respondent is entitled to the suit property Acres 2.19 ½ in ancestral property S.F.No.403/1B as per the registered exchange deed dated 15.11.1985 bearing document No.3451/1985 and also as per the registered release deed dated 15.11.1985 bearing document No.3925/1985. The defendant owns the suit property as per the above and is in possession of the same. The revenue records are in the name of the respondent and the suit property is sub divided as S.F.403/1B. The respondent is issued the patta for the suit property in the name of the respondent and the revenue authorities have issued separate patta for the property in the name of the 1st respondent. The S.F.403/1B was subdivided and was granted patta in favour of the 1st respondent in the year 1984 itself. The 1st respondent is in possession and enjoyment of the property for the past 40 years. The petitioner has no right in the property. The petitioner has suppressed the subdivision of the property and filed a false case against the respondent. The Petitioner and her son Mohan Raj with an illegal intention to usurp the property of the respondent has filed the above case and also harassing the respondent by giving false complaint before the police. Originally, on 22.12.2022, the Petitioner and her son Mohan Raj damaged the Wired Fence of the defendants Property. The surveyor has already measured the properties the suit property. The respondent lodged a Complaint before the Mangalam Police Station and Police Authorities warned the Petitioner and her son. The petitioner has suppressed the Original facts of the case and has filed a false case by misrepresenting the Original Facts. The respondent was issued a CSR Copy 210/2022 dated 22.12.2022.

3.3 The petitioner's Father Ammasai Gounder and her Brother Muthu Gounder together was allotted only half of Acres 1.19 $\frac{1}{2}$ i.e., only less than 59 cents. B Schedule, as Partition Deed dated 30.06.1956. As per another partition deed dated between the Family members, Partition deed dated 07.12.1961, between Muthu Gounder and Ammasai. The petitioners mother was allotted only same only half of Acres 1.19 $\frac{1}{2}$, i.e., only less than 59 cents as per document No. 1143/2000, the Petitioner mortgaged her property in the Mangalam Society Co-operative Bank. In the above document itself Acre 1.19 cents were mortgaged. The petitioner is with an ulterior motive filing the above petition.

3.4 As per the Exchange Deed dated 15.11.1985 bearing document no. 3451/1985, the petitioner's mother exchanged 41 $\frac{1}{2}$ cents to the 1st respondent and the 1st respondent and his brothers exchanged 4 $\frac{1}{4}$ cents to the mother of the petitioner. Hence, the Petitioner is not entitled to any other share other than her entitled share. The petitioner's property has permanent boundary and wired fence. The respondents have already measured and fixed the boundary. The property is having buildings, coconut trees and there is electric service connection in the name of the 1st respondent and CCTV surveillance also has been installed in the suit property. The petitioner is not having any right in the suit property.

3.5 If at all, the court inclines to survey the property, the respondent states that the court may order to survey and measure the property as per the patta No.792 in S.F 403/1C and as per the document dated

07.12.1961, the partition Deed as per which the Acres 1.19 ½ only is allotted to the mother of the petitioner.

4. Point for consideration :

Whether the petitioner is entitled for the relief as prayed for?

5. Answer to the point :

5.1 Heard. Both side records perused.

5.2 This petition has been filed under order 26 rule 9 CPC for appointment of advocate Commissioner to measure and fix the bound stones by verifying the documents with help of Taluk Surveyor. On the ground that the suit property belonged to the petitioner. The petitioners mother Chellammal was allotted 1.19 ½ acres of land by way of partition and subsequent by way of exchange deed, she was allotted 1.2 acres in survey no. 403/1 of Mangalam village, all the parties have given concerned for the allotments and they also signed in the exchange deed. Now the respondents are disputing the allotment of 1.28 acres through the exchange deed. Hence, the petitioners have filed this suit. The petitioner gave representation to taluk surveyor to measure the property and to demarcate the boundary line. Even though the surveyor visited the property but the respondents have not permitted him to measure the property. Hence, the petitioners have obtained police help for measurement. Even though, the police have assisted for measurement but the respondents have vehemently opposed the same. Hence, the court has to appoint an advocate commissioner to measure the property with help police.

5.3 The respondents have filed counter by objecting the petition by stating that, the petitioners mother has no right over the "C" Schedule of property she never allotted 8-1/2 of cents exclusively. There is no such documents no. 301-1985 the respondents is entitled 2.19-1/2 acres in ancestral property bearing survey no.403/1B as per the registered exchange deed dated 15.11.1985. The revenue records are stands in the name of respondents. The suit property sub divided as S.F.No. 403/1B and granted patta in the favour of 1st respondent in the year 1984 itself. ON 22.12.2022 the petitioner and her son Mohanraj damaged the wired fence of the defendant. Hence, they lodged a complaint before Mangalam Police. The petitioners mother was allotted only half of 1.19-1/2 acres less then 59 cents and she mortgaged the same with Mangalam Co-operative Bank in document no. 1143/2000 by mentioning the extend as 1.19 acres. As per the exchange deed dated 15.11.1985 the petitioners mother exchanged 4-1/2 cents to the 1st respondent and the 1st respondents his brothers exchanged 4-1/4 cents to the mother of the petitioners. Hence, the petitioner is not entitled other then her entitled share. The petitioners property has permanent boundary with wire fence. The respondent have already measured the property and fixed the boundary. The property is having buildings, coconut trees and electric service connection and also CCTV surveillance been installed in the suit property. If at all the court inclined to survey the property the court may order to survey and measure the property as per patta no. 792 in S.F.No. 403/1C vide document dated 07.12.1961.

5.4 The learned advocate appearing for the petitioner would argued that, to come a proper conclusion the property has to be measured with the help of surveyor. Though the respondents filed counter by objecting the petition. But they accepted to measure the property with condition. Hence, to come to a correct conclusion in the suit, appointment of advocate Commissioner is necessary. Hence, the petition may be allowed.

5.5 By objecting the arguments the learned advocate appearing for the respondent would argued that, the petitioners/plaintiff's have prayed in their plaint as one of the prayer for mandatory injunction against the 5th defendant directing in to measure the suit property to demarcate the boundary line, as per the exchanged deed dated 15.11.1985. Therefore, if this court allow this petition it amounts to allowing the main prayer itself. Since, the plaintiff's have prayed for demarcation of boundary line this petition cannot be allowed.

5.6 This court on perusing entire case records particularly the plaint averments the plaintiff has come forwards the suit for declaration that she is the absolute owner of 'C' schedule property by virtue of exchange deed dated 15.11.1985, the permanent injunction against the defendant from disturbing the plaintiffs peaceful and enjoyment as well as the mandatory injunction against the 5th defendant i.e., the Tahsildar, Tirupur south by directing him the measure the suit property to demarcate the boundary lines and to fix the boundary stones through the surveyor as per exchange deed dated 15.11.1985. By saying that on 15.11.1985 the deed of exchange was entered between the plaintiffs mother and the legal heirs of the Muthugounder and in the said deed on extent of 1.28 acres was allotted to the plaintiff

mother. But, the specific case of the defendant are that the plaintiffs mother has no right over the 'C' schedule property specifically stated that the petitioner is not entitled 1.28 acres in survey No.403/1 and she never been allotted 8 ½ cents exclusively. Since the petitioner has filed this petition so survey the property particularly based on the disputed exchange deed dated 15.11.1985 to fix the boundary line. But, the defendant has specifically denied the above said claim. Further, the plaintiff also prayed for mandatory injunction in the suit against the 5th defendant to measure the property and to fix the boundary line based on the above said exchange deed. Since, the defendant has specifically denied the right title and ownership of the petitioner/plaintiff through the above said exchange deed in respect of 'C' schedule property. If this court allow the petition it amounts to decreeing the suit without oral and documentary evidence.

5.7 Therefore, this court holds that whether a Commissioner is to be appointed as per the prayer of mandatory injunction made in plaint is to be decided only after full trial not through the petition, hence concludes that without prejudice to the parties to seek the remedy in the original suit this petition can be dismissed. As discussed above, this court is not inclined to allow this petition.

Finally, this petition is dismissed. No cost.

Dictated to Steno - Typist, typed by her directly into the computer and corrected & pronounced by me in open Court, on this 09th day of July, 2024.

Principal Subordinate Judge,
Tiruppur.

Both side Witnesses and Documents:Nil

Principal Subordinate Judge,
Tiruppur.

**Fair Order
I.A.No.06/2024
in
O.S.No.71/2023
Dated: 09.07.2024
PSJ Court, Tiruppur**