

IN THE COURT OF THE PRINCIPAL DISTRICT MUNSIF, TIRUPPUR.

Present : Thiru.K.R.Kannan, B.A., B.L.,

Principal District Munsif, Tiruppur.

(J.O.CODE : TN01220)

Monday, the 25th day of March 2024.

I.A.No.8/2022 in O.S.No.01/2022

Sri. V.K.M. Muhamed Haneefa

... Petitioner/ Plaintiff

/Versus/

1. A. J. Abibur Rahman
2. Shakayam
3. The Commissioner of
Tiruppur Muncipal Corporation
4. Tamil Nadu Represented by its
Tiruppur District Collector,
5. The Tahsildar of Tiruppur South Taluk.

... Respondents/Defendants

This petition came before me on 22.03.2024 for final hearing in the presence of Thiru. S. Dharmaraj., B.Sc., B.L., Advocate for Petitioner/Plaintiff and Thiru.M.Mohamed Khan., M.B.A., B.L., Advocate for the 1st Respondent/Defendant and after hearing both parties and on perusal of available records, this court passed the following:

ORDER

The petitioner who is the Plaintiff in the suit filed this petition Under Order XXVI Rule 9 r/w 151 of CPC and asked this court for appointment of an Advocate/Commissioner to visit and measure the petition mentioned property and the 1st defendant property in order to find out the encroachment if any as prayed for in the petition.

2. The averments stated in the affidavit are as follows :

i) The petitioners are herein and plaintiffs in the above suit.

ii) The plaintiffs filed the suit for declaration for removable of encroachment and possession and for other relieves against the defendants.

iii) The petitioners submit that an extent of 1287 square feet land situated in Tiruppur Big Bazaar street, in Tiruppur Village Survey filed Number in T.S.F. No. 50 and now survey filed No.9 in ward "D" and Block No. 54, within the limit of Tiruppur, Joint II Sub Registration situated in Municipal Corporation Town, is belonged to plaintiff by virtue of partition deed dated 24.04.2015 bearing registration number 2175 of 2015. In the above said property, an extent of 50 square feet on the Northern side near boundary of the 1st defendant site bearing number TSF.No. 49 and New T.S.No. 8 is the suit property. The suit property fully described in the schedule here under.

iv) The petitioner further submit that the above said suit property and other connected properties originally belonged to petitioner father, his father executed a settlement deed dated 03.12.1960 in favour of his mother and her children including petition being he was minor under registered deed dated 03.12.1960 bearing registration number 2196/1960.

v) The petitioners further submit that as per the settlement deed dated 03.12.1960, the suit properties were situated in the Town survey filed numbers in T.S.No. 746/10/6 with Asst. No. 12176, T.S.No. 746/10/6 with Asst. No. 12179, and T.S.No. 746/10/6 with Asst. No. 12180. On 08.07.1987, petitioner mother and his brother and sisters entered into partition of the above said property and by which 4th item of "A" Schedule properties were allotted to the petitioner and his brother. The said 4th item is the suit property.

vi) The petitioners further submit that thereafter petitioner and his brother partitioned our joint the common property by a registered partition deed on 24.04.2015 and the suit property is allotted to petitioner. The petitioner is the absolute

owner of the suit property as per the partition deed dated 24.04.2015 bearing registration number 2175 of 2015. From the date of the said partition deed, the plaintiff has been in possession and enjoyment of the above said property. The above said property is here in after referred as suit property.

vii) The petitioners further submit that the entire suit property has been constructed with tile roof made up of lime and brick stones and aged more than 70 years. Petitioner father and his family member have been continuously in possession and enjoyment for more than 70 years with entire extent.

viii) The petitioner further submit that the 1st defendant is the neighbor site owner of the suit property, which is situated on the northern side. While so, on 09.09.2021, the 1st defendant started to dismantle the East – West wall of the suit property. Even though the plaintiff resisted the illegal act of the 1st defendant, he was continuously doing the same without petitioner absence. So, petitioner lodged a complaint to the Inspector of police of Tirupur South police, but the police, being it is civil nature, did not take action against the 1st defendant. On 07.10.2021, the plaintiff again lodged a complaint to the said police for taking action against the 1st defendant. The said police Inspector received the complaint and passed a receipt of CSR to the plaintiff. But all attempt made by the plaintiff put in vain.

ix) The petitioner further submit that the 1st defendant is a very dominant person and having highly political influence and he can do anything within the local town. The petitioner made several attempt to stop the construction over the suit property by lodging a complaint and letters to the higher officials on various dates, but the petitioner not able to stop of construction made by the 1st defendant. The 1st defendant is also encroached the street and he is putting up construction, the defendants 2 to 5 did not take any action against him in spite of petitioner instruction.

x) The petitioner further submit that he have submitted here with the old survey field map along the above said title deeds dated 1960, 1987 and 2015 as his document to prove their title to the suit property and to prove the long possession and enjoyment for more than 70 years. In the said survey filed, in the entire T.S.No. 50, there was construction of tile house building over the entire suit property.

xi) With the ulterior motive, the 1st defendant have changed their extent and measurement of the suit property on the Northern side with help of surveyor, who had measured the lands of Natham Settlement scheme of Tamil Nadu State. At time of the recent re survey, the petitioner was not served with notice to be given under section 9 of Tamil Nadu Land Survey and Measurement Act. In the recent re survey the North- South measurement on the eastern side was decreased and diminished. So, the re survey measurement of the suit property is highly illegal and it has to be declared as Null and void.

xii) The petitioner further submit that on 02.12.2021, the 2nd defendant measured the suit property and also the 1st defendant's property as per the town survey filed map. At the time of measurement, the petitioner submitted all his title deeds and old town survey filed mad. But he acted highly in favour of the 1st defendant and did not care about the petitioner words. The 2nd defendant was acted highly in favour of the 1st defendant. So the 1st defendant's encroachment of the suit property on the northern side into 50 square feet was done with help of the 2nd defendant. Hence he was added as party to the suit.

xiii) The petitioner further submit that taking advantage of the 2nd defendant's help and instigation, the 1st defendant encroached 50 square feet in total as mentioned in the plaint schedule of the property and constructed buildings over the encroached portions. After knowing the encroachment, the plaintiff has approached this court with this suit for declaration and possession and also for other relief. The 1st defendant has not only encroached the suit property, he but also encroached the public street and he has constructed with large extent than he actually is entitled to as per his title deeds.

xiv) Thereafter the petitioner have approached so many ways to remove the encroachment by way of complaints to the higher officials, but nothing has been achieved. Hence the petitioner filed this petition to note and measure the suit encroachment and street encroachment by the 1st defendant. Hence, the petitioners prays to allow the petition.

3) The objections stated in the counter of the 1st Respondent/ defendant are as follows :

i) The respondent submits that, the suit property is first defendant ancestral property and he is in peaceful enjoyment and possession since 1946. This said property very bordering to the plaintiff property.

ii) The defendant further submit that, The Co- sharer has executed a valid sale deed in favour of the 1st defendant after receiving the sale consideration vide sale deed No. 2248/2022 and the same is registered with SRO Joint 2 at Tiruppur. After some time of Registration the plaintiff turned up to defendant and asked to sell the property to the plaintiff, which is denied by the defendant then and there.

iii) After registration, knowing the fact, the plaintiff arranged a survey through Tiruppur Municipality Surveyor Team. The surveyor team visited the site, Took survey and marked the boundaries.

iv) The defendant more over submits that, being the defendant building is old one, The defendant demolished entire structure and planned to go for a New construction. After Demolish, he applied with Tirupur Muncipal Corporation for survey of his site on 15th September 2021, and he has paid the required fee for the same. Subsequent to this the survey team visited the site. Took measurement and marked the Boundaries. In connection to the survey, The surveyor they issued a report.

v) At the time of Survey team visit and Marking boundaries the plaintiff was literally there. After a long time of survey, raising objection show his bad intention that, Nobody should raise any structure in the neighborhood of, mucky problems, he can create that nobody will prefer either to construct or to buy the property. So that, it becomes easy to negotiate and buy the defendant property at Rock bottom price.

vi) The respondent/ defendant also states that, only after a proper survey, the defendant shifted his house to a rental place and at at this moment he is paying Rs. 15,000/- per month for the same.

vii) Defendant further submits that only after a proper survey, the defendant commenced construction. Also the 1st defendant has not encroached a part or whole

of the plaintiff property and till now he spent Rs.19 Lakhs on the building. There is no need of deputing a commissioner through the court is unnecessary and unwanted.

viii). The defendant also states that even after two times of survey and marking boundaries in the suit property, Further waiting for a long time to lift up the building and also keeping silence for a long time, raising objections at the time of Middle of construction shows the bad intention of the plaintiff., Hence the court should not allow the petition filed by the plaintiff praying to remove any structure already constructed or to resurvey or any interim injunction and to depute commissioner to resurvey. Hence, it may be dismissed.

4. Both side have not lead any evidence and no documents were marked.

5. Now the Point to consider is whether this petition has to be allowed or not?

6. Point for Consideration :

i) The petitioner herein is the plaintiff in the suit and the respondents are defendants in the suit. In this application, except the 1st defendant other defendants failed to file counter. The petitioner, who is the plaintiff filed the suit for the relief of declaration and recovery of the possession and also asked a relief of mandatory injunction to remove the super structure made in the suit property.

ii) The 1st defendant raised a defense stating the plaintiff and 1st defendant's property are situated very close. The building of the defendant is an old one and so the defendant demolished entire structure and planed to construct a new house in his property. After demolition, as per the procedure the defendant took steps to measure his property with the help of Defendant's 4 and 5. At the time of measurement at the fag end the plaintiff raised his objections to the measurements and the same is not valid one. The learned counsel further submitted already there is no encroachment made by the defendant as pleaded by the plaintiff in the plaint. So, the 1st defendant counsel asked this court to dismiss the petition with cost.

iii) The learned plaintiff counsel argued the 1st defendant encroached the plaintiff property and so in order to note down the encroachments he asked this court

to allow the petition. To this argument's the learned 1st defendant counsel made a reply stating if this court comes to a conclusion for appointment of an Advocate/Commissioner and he may be directed to measure the plaintiff and 1st defendant properties as per the title deeds and as per revenue records.

iv) Hence, considering the submission made by the plaintiff and 1st defendant counsel since, the plaintiffs asked a relief of recovery of possession of the encroached portion and to remove the super structure in the encroached portion by way of mandatory injunction, this court hereby comes to a conclusion the Advocate/Commissioner report will help this court to answer the issues involved in the suit.

v) So, In the interest of justice, this petition is allowed. Advocate Ms.P.Salini (Junior of Advocate V.Anandan) is appointed as an Advocate/Commissioner for the petition mentioned purpose and the commissioner remuneration is fixed as Rs.7.500/- (Rupees Seven thousand five hundred only) and the same to be paid directly to the Advocate/Commissioner within a week. The Advocate/Commissioner is directed to give notice to all the parties well in advance about the visit of the suit property. The Advocate/Commissioner is directed to measure the Plaintiff, 1st Defendant property as per the title deeds and as per the revenue records and to find out if there is any encroachment in the suit property. The Advocate/Commissioner can take the assistant of VAO and Surveyor to measure the suit property from a common stone. If any memo of instruction's is given by the parties to the Advocate/Commissioner at the time of visit the Advocate/Commissioner is directed to consider the same and to act as per the provision's contemplated in Order XXVI of CPC. For filing commissioner report and plan call on 26.04.2024.

Dictated to the Steno-Typist, directly and typed by him in court computer and corrected and pronounced by me in the open court, on this the 25th day of March 2024.

Principal District Munsif ,
Tiruppur.

LIST OF WITNESSES & DOCUMENTS

On the side of Petitioners Witnesses & Documents :- NIL

On the side of Respondent Witnesses & Documents :- NIL

Principal District Munsif,
Tiruppur.