

IN THE COURT OF THE DISTRICT MUNSIF, DHARAPURAM

Present : Ms.Mathivathani Vanangamudi, B.A.,L.L.M.,

District Munsif, Dharapuram

On this the 02nd Day of January 2024, Tuesday

I.A.No.2/2023

O.S.No.22/2015

1. ChennimalaiGounder(Died)
2. Lakshmi
3. Eswaramoorthy
4. Rajeswari

... Petitioners/Plaintiffs

/Vs/

1. Nachammal
2. Pavammal @ Pongiyathal

...Respondents/Defendants

This petition is presented before me on 08.11.2023 for final hearing, in presence of Mr.K.PaneerSelvam,B.A.,B.L., the learned counsel for the Petitioners/Plaintiffs and Mr. K.Thennarasu,B.Sc.,B.L., respondents/defendants. Upon hearing the counsel on both sides on perusal of the documentary evidences and records stood over for consideration till this day, this court passed the following:

ORDER

The petition is filed under Order XXVI Rule 9 and Section 151 of Civil

Procedure Code to appoint an Advocate/Commissioner.

1. The brief averments of the affidavit filed by the petitioner :

It is stated that during pendency of the suit 1st petitioner died on 14.07.2015 and his son Rathinasamy died 13.02.2017. Valliammal w/o of Chennimalai gounder died on 01.11.2019. The petitioners 2 to 3 are legal heirs of deceased of 1st petitioner. As per sale deed 15.04.1971 the properties in S.F.No.211 an extent of p.acre.1.50 belongs to Chennimalaigounder the suit pathway measuring 16 feet runs on the northern side of Chennimalaigounder and the respondents properties. The suit ABCD pathway is oldest one. On the northern side, iron fence and on the southern side, live fence is situated. The petitioners are having right in the ABCD pathway. There is no alternate pathway for the petitioners. Hence, this petition in order to note down the physical features of the suit pathway.

2. The brief averments of the counter filed by the Respondent:

It is stated that the petitioner purchased properties in S.F.No.210,211 situated to the eastern side of respondents property as per sale deed dated 15.10.1971. Adjacent to S.F.No.210 biomass itteri is situated in S.F.No.105. The 1st petitioner sold his property in S.F.No.210 to third party. There is a pathway which runs north east measuring 15 feet. The said cart track is utilized for the sake of respondents to reach their property. The petitioner has to prove the existence of pathway based on the evidence. This petition is filed after 8 years

of filing the suit. Hence prays for dismissal.

3. No oral or documentary evidences let in on both sides. Heard both sides. Materials on records perused.

4. The point for consideration in this petition is,

Whether the petition is to be allowed or not?

5. The petitioners has filed the suit for the the relief of Permanent Injunction. The petitioner claims that the respondent is distrubing the usage of ABCD pathway by destorying the BCD pathway. On the other hand, the respondent contends that the petition is filed at belated stage, the pathway measuring 15 feet is utilized by the respondents and the petitioners does not have right in the same. The petitioners submitted that in order to prove the exsistence of cart track appointment of Advocate Commissioner is necessary. Though the respondents resists stating that there is no merits in this petition, at this stage without going to the merits of the case, the physical features of the ABCD suit cart track shall be noted. The advocate commissioner shall elucidate and throw light on the points raised by petitioner and such other points necessary.

6. In the result, this petition is allowed. Mr.Bharani Kumar Advocate, is appointed as Advocate Commissioner in this petition and his remuneration is fixed as Rs.4,500/- (Rupees Four thousand five hundred only), the same shall be paid by the petitioner on or before 23.01.2024. The Advocate Commissioner is directed to visit the suit property and to note down the physical features of

ABCD pathway after due notice to both sides and submit a detailed report and plan on or before 31.01.2024. The commissioner is appointed for the petition mentioned purpose. Report and plan by 31.01.2024 . Call on 31.01.2024.

Dictated by me to Steno typist, typed by her, checked, corrected and pronounced by me in Open Court on 02.01.2024.

Sd/-Ms. Mathivathani Vanangamudi,
District Munsif,
Dharapuram.

Petitioner and Respondent side witnesses and Exhibits: Nil

Sd/-Ms. Mathivathani Vanangamudi,
District Munsif,
Dharapuram.