

IN THE COURT OF THE DISTRICT MUNSIF JUDGE, PALLADAM

**Present:- Thiru. V. Kalidasan, B.Com., L.L.M.,
District Munsif,Palladam.**

Tuesday the 13th day of August 2024

I.A. No.04/2023

in

O.S.No.73/2016

1. Karuppannan
2. Palaniammal(died)
3. Shanthi
4. Radha

... Petitioners/ Defendants no. 1 to 4

/Vs/

1. Senniappan(died)
2. C. Balasubramaniam

... Respondents/ Plaintiffs

The petitioner filed this petition Under Order 26 Rule 9 Section 151 of CPC to appoint an Advocate Commissioner along with surveyor to measure the suit property and to note down the physical features of the suit property.

This Petition is coming on 06.08.2024 for final hearing before me in the presence of Thiru.N.Sathish Kumar, B.A.,B.L., Advocate for the Petitioners and Thiru.A.Chinnasamy, B.A., B.L., Advocate for the Respondent. Upon perusing the Petition, affidavit, Counter statement and other connected material papers of record and hearing the arguments of both sides and having stood over till this day for consideration, this court made the following...

ORDER

1. The case of the petitioners herein is that the description of property mentioned by the plaintiff is not correct. The alleged cart track to the width of the 12 feet as alleged by the plaintiff is false with a dishonest intention to claim an extent which is more than the 5 cents which is morefully mentioned and left for the purpose of common cart track. The plaintiff has purposely suppressed the cart track found in S.F.No.16 which was sub-divided as S.F.No.16/4 of Poomalur village. The FMB sketch and RSR pertaining to the S.F.No.16/4 will substantiate the above said fact. The petitioner and other defendants and as well as the plaintiffs have common right and enjoyment over the S.F.No.16/4 cart track. The plaintiff has purposely suppressed the existence of the Cart track in S.F.No.19/2 which is morefully mentioned in partition deed dated: 14.08.1974, vide document no.1331/1974 (document no.2). The fact remains that the cart track found which was sub-divided as S.F.No.16/4 is the connecting cart track and the only access which connects the cart track in S.F.No.19/2 and as well as the lands in S.F.No.19/3B. In other words, the plaintiff has to pass through the cart track S.F.No.16/4 only to reach the cart track in S.F.No.19/2 and from there he has to reach the lands in S.F.No.19/3B. to expose the falsity of the contention of the plaintiff that the alleged cart track in S.F.No. 19/3B to the alleged width of 12 feet is nothing but a false allegation of the plaintiff alleged with a dishonest intention to claim an extent which is more than the 5 cents. So the measuring the cart track S.F.No.16/4 and cart track found in S.F.No.19/2 are also very much significant to decide the issue involved in this suit. The 5 cents which has been allotted for making provision for the cart track which is morefully mentioned in the partition deed has to be measured with the help of Surveyor and an Advocate Commissioner has to be appointed by this Hon'ble court in terms of the partition deed in it's true letter and spirit to ascertain and identify the exact width available for the formation of the cart track. Without following that procedure, the plaintiff has filed this suit with a dishonest intention to claim

more extent than the available extent provided in the partition deed, by bypassing the procedures and falsely alleged the width of the alleged cart track as 12 feet. The A schedule of property mentioned in the partition deed dated 14.08.1974 which was allotted to Subbana Gounder is extracted hereunder. The plaintiff had purposely suppressed the 3½ Anggana tiled roof salai and kalam situated in S.F.No.19/2, which is morefully mentioned in the "A" schedule of property of the above said partition deed, belongs to Subbana Gounder, subsequently after his death belonged to them. Before the filing of the usit the said salai had completely damaged. The above said salai land and the above said kalam land has to be measured with the help of the surveyor. Hence, prayed to allow this petition.

2. The case of the 2nd respondent is that the petitioner framed the petition with the flimsy reasons. The cart track in the partition deed is true. In the partition deed an extent of 5 cents was provided for the cart track. In respect of the cart track portion in para 5 and 6 of the plaint specifically pleaded as “Immediately within few days of the registration of the partition deed in the year 1974 itself, the 1st plaintiff formed the cart track to the width of 12 feet from the eastern end of Vari, the portion of the cart track is one feet higher than the cultivable land till it reaches the plaintiffs land measuring 2.08 acres on the northern portion in S.F.No.19/3B and also laid underground pipeline The cart track is mentioned as ABC in the plaint plan. The 1st plaintiff and his father enjoyed the 12 feet cart track continuously openly as a matter of right by taking bullock carts, tractors, lorries, van to reach their lands. Therefore the question of fixing the boundary for the 5 cents in respect of cart track portion is absolutely unnecessary. The allegations the plaintiff is not enjoying the 12 width cart track continuously, openly as a matter of right by taking bullock to reach their land is false. The plaintiff and the defendants are enjoying the cart track width of 12 feet to the knowledge of the defendant without any obstruction and continuously,

openly, as a matter of right. The suit is pending from the year 2016. The 4½ anganam salai, for which the defendant wants to fix the boundaries and S.F.No.16/4 it is not a suit property. The description of property given the appointment of commissioner is entirely different from the property described in the plaint. The petitioners filed this application only with a view to collect evidence to measure the property which are not suit properties. The petition is highly belated one. This respondent submits that the appoint of commissioner at this stage is absolutely unnecessary to decide the dispute in the suit. The petition is devoid of any merits filed with view to harass this respondent and the same is to be deserved to be dismissed with costs. Hence, prayed to dismiss this petition.

3. Points for consideration:

Whether this petition will be allowed or not ?

4. Heard both sides. No oral or documentary evidence is let in by both sides.

5. Answer to the point :

6. Materials on records perused. This petition was filed by the petitioner/Plaintiff Under Order 26 Rule 9 and Under Section 151 of CPC the to appoint a court commissioner to inspect the suit property along with the surveyor to measure the suit property and note down the physical features and to file a report and plan.

7. The learned counsel for the petitioners submitted that the plaintiff had filed a suit in respect of the alleged cart track in S.F.No.19/3B to the alleged width of 12 feet. The said contention of the plaintiff is false. As per the partition deed dated 14.08.1974 the A schedule properties was allotted to the petitioners father Subbanna Gounder and B schedule properties was allotted to the 1st plaintiff and his father. In the said partition deed in S.F.No 19/3B to forming the suit cart track, it was left allotted to the both parties for extent of 2 1/2 cents

each and totally 5cents in common and no suit cart track to the width of 12 feet is available as alleged by the respondents/plaintiffs. Further, the cart track in S.F.No.16/4 only to reach the cart track in S.F.No. 19/2 and from they have to reach the lands in S.F.No.19/3B. In order to find out the actual width of the suit cart track it is necessary to appoint commissioner with help of surveyour.

8. The learned counsel for the respondent submitted that the respondent has continuously enjoying the 12 feet with cart track for the very long time. The question of fixing the boundary for the 5 cents in respect of cart track portion is absolutely not necessary. In the year 1974 itself the deceased 1st plaintiff formed and has been enjoying the suit cart track to the width of 12 feet from the eastern end of vari. The present petition is filed only to collect evidence to measure the properties which are not suit properties.

9. On perusal of the petition and accompaigned affidavit averments the petitioners also stated about the cart tracks in S.F.No.16/4 and S.F.No.19/2 which are not subject matter of the above suit. The petitioners stated that the cart track S.F.No.16/4 is only to reach the cart track in S.F.No.19/2 and from there he has to reach the lands in S.F.No.19/3B. The said S.F.No.16/4 and S.F.No.19/2 are not subject matter of the above suit. Therefore, the prayer to also measure the width of suit cart tracks in S.F.No.16/4 and S.F.No.19/2 along with the suit cart track in S.F.No.19/3B to noting down the lie of S.F.No.16/4 is not necessary. Both sides have admitted as per the partition deed dated 14.08.1974 they have alloted common to forming the suit cart track to the extent of 5 cents. But the width of the suit cart track is not available in the said partition deed and only the extent of suit cart track alone is available.

10. As per the respondents in the year 1974 itself the deceased 1st plaintiff had formed the suit cart track in S.F.No.19/3B to the width of 12 feet. On the other hand the petitioners submitted that if 12 feet cart track is arrived it is become more than 5 cents as alloted in the said partition deed. Considering the

facts and issue involved in the suit cart track allotted in the partition deed dated 14.08.1974, 5 cents to forming a suit cart track alone has mentioned and the width of the cart track is not available. In order to arrive at a just and proper adjudication in respect of the issues involved, this court thinks that the appointment of Advocate Commissioner is necessary. However, the cart tracks in S.F.No.16/4 and S.F.No.19/2 are not subject matter of the above suit, hence, to appointment of the Advocate Commissioner to note down the lies of the cart tracks in S.F.No.16/4 and S.F.No.19/2 are not necessary to decide the above suit. Therefore, this court is inclined to partly allow this petition only in respect to the suit cart track in S.F.No.19/3B.

11. In the result, this petition is allowed. Adv. Mr.J.Sarvabhauman, M.S.No.3579/2011 is appointed as Advocate commissioner and the remuneration is fixed as Rs.12,000/- to be paid on or before 05.09.2024 directly by returned to the commissioner appointed hearing. failing which this petition will stand dismissed. The Advocate commissioner is directed to inspect the suit property after giving notice to the both parties with the help of taluk surveyor to measure the 5 cents which has been allotted for making provision for cart track which has been morefully mentioned in partition deed dated 14.08.1974 in order to ascertain and indentify the exact width availale for the formation of the cart track and to note down the physical features and to measure the same and to file a detailed report and plan to this court. For reporting payment to the Advocate Commissioner. Call on 07.09.2024

Dictated to Steno - Typist, and typed directly in computer and corrected & pronounced by me in open Court, on this 13th day of August 2024

**DistrictMunsif,
Palladam.**