

IN THE COURT OF THE DISTRICT MUNSIF, AVINASHI

PRESENT: SELVI. M. AFZAL FATHIMA,

B.COM., B.L(Hons), L.L.M.,

DISTRICT MUNSIF, AVINASHI

Wednesday, the 6th day of April, 2022

I.A.No. 327/2020

O.S.No. 154/2020

K.Kumarasamy

...Petitioner/Plaintiff

..Vs..

1. S.Kanagaraj

2. K.Gobinathan

...Respondents/Defendants

This petition is coming on 06.04.2022 for final hearing before me in the presence of Thiru.M.Selvaraj, B.A.,B.L., D.L.L.,A.L., Advocate for the Petitioner and Thiru.A.Chinnasamy, B.A., B.L., Advocate for the Respondents and this petition having stood over under this Court's consideration and upon perusing the records and after hearing the arguments, and this Court passed the following

ORDER

The petitioner has filed this petition under Order 26 Rule 9 of CPC.

2) The summary of the averments in the affidavit filed by the petitioner is as follows:

1. The petitioner is the plaintiff in the suit and submits that, he is the absolute owner of the petition mentioned property as per the partition deed dated 18.06.2014. The plaintiffs mother Poovathal to the property through settlement deed dated 07.04.1969 and after the death of his mother, he submits

that, he and his two brothers partitioned the property on 18.06.2014. After the partition the 'C' schedule was allotted to the petitioner. He submits that, he has been in the possession and enjoyment of the 'C' schedule property since then. He submits that, he sold an extent of 0.50 acres out of 2.47 ½ acres in the northern side of S.F.No.147/1 to the 2nd defendant on 09.06.2017 and sold another extent of 0.50 acres to the 1st defendant. He submits that, he has been in the possession and enjoyment of 0.47 ½ acres. After that the property was subdivided and his remaining land of 1.47 ½ in S.F.147/1 along with his brothers to an extent of 75 cent and Muthusamy's land with an extent of 1.88 ½ that is totally out of 4.11 acre in 5.11 acre was subdivided as 147/1C . He submits that, after his purchase of 1 acre by the defendants, they have constructed a factory in their land in S.F.No.147/1A and 147/1B and after that, they dug a pit in the north east corner of the petitioner's land in 147/1C and put up a concrete for the purpose of constructing a septic tank and bathroom with toilet over the same. The respondents have encroached a portion of their property and when given an application to measure the property, they gave consent and agreed to the same. There after the property in S.F.No.147/1A, 147/1B and 147/1C were measured on 05.03.2020 by the surveyor and the V.A.O. On measuring, the surveyor told that the respondents have constructed the tank in the S.F.147/1C property only. After getting to know about the encroachment, the petitioners put up a stone as per the survey made in the northern border and as told by the Revenue officials.

When the respondents removed the stone, the petitioners lodged a police complaint on 13.03.2020. On questioning by the police, the respondents submitted that, they will solve the matter amicably amongst themselves. But, the respondents have not taken any effort to solve the matter and they have threatened the petitioners stating that, they will not remove the building wall and the septic tank.

2. They submit that, the respondents are ready to construct the building over the encroached portion and it is very essential for the appointment of an Advocate commissioner to measure the same with an assistance of Taluk surveyor and note down the physical features of the petition mentioned property.

3) The Counter statement filed by the Respondents are as follows:-

1. In the counter, the respondents submit that, after they purchased the property, they made arrangements to construct a spinning mill in their property and while making arrangements, the Vasthu experts measured the property and as per their suggestions, the site was measured for an extent of 4 cent on the south of S.F.No.147/1B which includes the property purchased by the 2nd respondent. On the western side, an extent of similar 4 cents abutting the north south public road on the souther portion of the property purchased by the 1st respondent is also to be included. On 05.07.2017, a compromise arrangement took place between the petitioners and respondents. Later, the land was measured with the help of the surveyor and boundaries were re-fixed

and possession were taken. Within a few days the respondents made an arrangement to put up construction and a water storage tank was constructed within the 4 cents of the south of S.F.No.147/1B. The water tank measuring 21 x 10 with a depth of 12 feet was converted into a septic tank and toilet and the bathroom were constructed. The respondents submit that, the septic tank was constructed with the permission of the petitioner. The petitioner never raised any objection. The respondents submit that, no encroachment has been made except by constructing in the 4 cents land belonging to the respondents and accepted by the petitioners. The respondents submit that, the surveyor measured the property on 05.03.2020 and the surveyor also told that the respondents are enjoying only extent of 1 acre as per the plan drawn in the year 2017 when the compromise arrangement was made.

2. The respondents also submit that, they have no knowledge about the police complaint given against them. The respondents submit that, the physical features of the suit property is already admitted by this respondent and the Commissioner need not be appointed to collect evidence. They submit that, the petitioners have to prove the title and possession of the property and pray that the petition may be dismissed or allowed if specifically directed to measured the property of the petitioner and the respondent as per the revenue records and title deeds.

4. The petitioner and Respondents side, no oral evidence adduced and documentary evidence nil.

5. Both side arguments heard and records are carefully perused.

6. THE POINT FOR CONSIDERATION IN THIS PETITION IS THAT WHETHER THIS PETITION IS DESERVES TO BE ALLOWED, OR NOT?

1. The issue in this petition is that, whether an Advocate Commissioner is to be appointed in the present case where an alleged encroachment has taken place. The petitioners submit that, the respondents have encroached their property by constructing the water tank which was later converted to a septic tank and a toilet and a bathroom are also told to be built in the alleged encroached land. But, the respondents deny the encroachment and submit that, they have constructed only in the property which belongs to them. The properties are sharing boundaries as they are located next each other. Further it is also found that, the question of encroachment is made and denied. Both the parties have agreed with regard to the title of the property. But, the alleged question of encroachment has to be answered, so this Court opines that, the construction and the details of measurements such made, and the details of the property in which the construction put up should also be noted down to decide the suit. So finally, it is held that an Advocate Commissioner is very necessary in this suit, so, the Commissioner would visit the property, note down the details of the construction and also measure the properties in accordance with the title deeds belonging to both the parties.

Thus, the petition is allowed. Advocate Mr.Lr.N.Ragunathan, is appointed as the Commissioner to visit the property and to note down the physical features of both the properties, which special emphasis to the construction being made.

Both the title deeds are to be referred while measuring the properties. The physical features and the extent to be noted down with the Assistance of Taluk Surveyor by measuring the properties based on the title deeds.

Remuneration is fixed at Rs.6,000/- and is to be paid by the petitioner. For Commissioner report and plan by 29.04.2022.

Dictated to the Steno-Typist and typed by her in Court Computer directly, corrected and pronounced by me in Open Court on the 6th day of April, 2022.

**S/d-M.Afzal Fathima,
DISTRICT MUNSIF,
AVINASHI.**

LIST OF EXHIBITS MARKED : NIL

LIST OF WITNESS EXAMINED : NIL

**S/d-M.Afzal Fathima,
DISTRICT MUNSIF,
AVINASHI.**