

In the Court of the I Additional District Judge, Tirunelveli.
Present: Thiru.V. PADMANABHAN, M.A.,M.L.,D.H.,
I Additional District Judge,
Tirunelveli

Tuesday, the 6th day of August 2024

I.A.No.4/2023 in O.S.102/2020

Ponnammal through her power agent
Mrs. K.Jeyalakshmi

... Petitioner/Plaintiff

/versus/

1. M.Durai
2. Chinnathambi
3. Sappani
4. Ooikattan (died)

... Respondents/defendants

This Petition came before this court on 29.07.2024 for final hearing in the presence of Thiru.K.Sankararaman, Advocate for the Petitioner and the 3rd respondent was already called absent and setexparte in suit and 4th respondent being died and Thiru.S.B.Kamalanathan, Advocate for the 1st and 2nd Respondents and upon hearing the petitioner side argument and upon perusing the written argument filed by the respondents, and on perusing the records and having stood over till this date for consideration, this court delivers the following:

ORDER

The petition is filed by the Petitioner under Order 26 Rule 9 of C.P.C., to appoint an advocate commissioner to inspect the petition schedule property with qualified surveyor and to file report and plan.

2. **The averments in the affidavit filed in support of the petition in brief are as follows:**

The petitioner filed the main suit for declaration and permanent injunction and for other reliefs against the respondents/defendants with regard to the plaint schedule property. The petitioner purchased the plaint schedule property through the registered sale deed dated 09.09.1984 executed by one P.Thiruvankida Reddy for valid sale consideration. The said Thiruvankida Reddy purchased the plaint schedule property from one Sudaliammal through a Registered sale deed dated 03.06.1968. After the purchase the petitioner got the patta No.2125 for the schedule property and also paying kist for it. After the purchase the petitioner alone is remaining as the lawful owner of the schedule property having lawful possession and enjoyment over the schedule property. The petitioner's husband is a Ex-service man and from 1984 onwards the petitioner was an employee of Indian Overseas bank and hence herself and her husband are residing at Madurai. Taking advantage of the same, the defendants and their men with some oblique motive are making hectic illegal attempts to interfere with the petitioner's lawful peaceful possession and enjoyment over the schedule property. Moreover the petitioner put up the fences on the four sides of the schedule property and also having a shed.

The petitioner and her son Mr.K.Selvakumar who came to Tirunelveli and visited the property on 03.08.2012. At that time the respondents/defendants and their men came to the schedule property and made illegal attempts to encroach the

schedule property and any amount of request to the respondents/defendants and their men were of no use. The respondents/ defendants and their men are openly expressing that they would do anything to encroach the schedule property and nobody under the sky can prevent their illegal actions. The respondents/defendants have no right to take law in their own hands. Hence the petitioner has filed the suit for declaration and permanent injunction against the respondents/defendants.

The respondents/defendants No.1, 2 stated in their written statement that the respondents/3, 4 defendants are the owners of the plaint schedule property and the respondents/defendants 1, 2 are the power agents of the respondents/defendants No.3, 4 and they are the proper and necessary parties to the suit. Hence the petitioner filed an impleading petition to implead the respondents/defendants No.3, 4 in IA No.584/2014. The said petition was allowed on 07.09.2015. Moreover the respondents denied the petitioner's title and disputed the lie and location of the schedule property. So the petitioner filed an amendment petition in IA No.1/19 and the same was allowed and suit OS No.369/12 was transferred from learned District Munsif Court, Tirunelveli to this court. It is made clear that the very description of the schedule property and the identification itself is disputed by the respondents/defendants. Under these circumstances appointment of an advocate commissioner to note down the physical features and measurement of the plaint schedule properties is not only made imperative but in dispensable to bring to the notice of this court, the correct identification physical features etc to this court by

way of appointment of an advocate commission. The Advocate commission report would minimize the scope of oral evidence and valuable time of the court would be also saved if advocate commissioner is appointed. Hence for the purpose of noting down the physical features and measurements of the petition schedule properties an advocate commissioner has got to be appointed. The appointment of commissioner will be also useful for deciding the real dispute as between the parties. If the petition is allowed, the respondents/defendants will not be prejudiced in any manner. If the petition is not allowed, the petitioner will be put to serious and hardship and loss. Hence this petition.

3. The contention raised by the 1st and 2nd respondent in their counter is in brief:

This petition is not maintainable either in law or on facts. The dispute between the plaintiffs and defendants is related to title of plaint schedule property. Whether the plaint schedule property belongs to plaintiffs or the defendants have to be proved only by the way of documentary evidence. On the strength of commission report, the title of the parties can not be decided. In the present case commission report will not decide the dispute involved in the case. The petitioners have to prove their title to the plaint schedule property only by way of documentary evidence. Only to collect evidence through this court the petitioners have filed this application. Hence, prays to dismiss the petition with costs.

4. The point for determination in this petition is whether the petitioner is entitled to get the relief as prayed in the petition?

5. **Point :**

Heard the petitioner side and written argument filed by the respondents. Admittedly the petitioner is the plaintiff and the respondents are the defendants in the main suit. The petitioner as the plaintiff filed the main suit for declaration and permanent injunction reliefs in respect of suit property.

6. In the affidavit filed along with the petition, the petitioner has stated that the respondents denied the petitioner's title and disputed the lie and location of the schedule property; they disputed identification of the schedule property and that the commissioner may be appointed to note down the physical features and measurements.

7. On the other hand, the respondents in the counter have stated that the dispute between the parties is title and possession of the schedule property and the same can not be decided on the strengthen of the commissioner report and plan.

8. From perusal of the schedule mentioned property stated in the plaint, it reveals that the petitioner claimed title and possession over the property situated in

S.No.728/2 admeasuring 25 cents lying north-western side out of 83 cents. At the same time, the respondents in the written statement denied the title and possession of the petitioner and they claimed that they have title and possession over the property situated in northern side within the same survey number admeasuring 22.1/4 cents. Further the respondents specifically stated in the written statement that description of the plaint schedule property, extent and boundaries are not correct.

9. As discussed above, both the parties claiming title over the suit property in the very same survey number that too in the very same direction. Moreover the respondents denied the particulars of the description mentioned in the plaint schedule property. In other words, the respondents dispute the description, boundary and measurement of the suit property. In such circumstances, if the commissioner is appointed and he inspected the property with the help of surveyor, his report and plan would be helpful to the court to decide the issue involved in the main suit.

10. Considering the above discussions and in the interest of justice, this court comes to the conclusion that the petitioner is entitled for the relief as prayed for.

In the result, the petition is allowed and Mr. Rajasekar J/o.R.Ramakrishnan is appointed as commissioner and his remuneration is fixed at Rs.8,000/-. The advocate commissioner is directed to inspect the property with

the help of surveyor after giving notice to both parties. Commissioner report and plan by 11.09.2024. The petitioner is directed to pay the remuneration to the commissioner directly.

Dictated to the steno-typist, transcribed and typed by her, corrected and pronounced by me in open court this the **6th day of August, 2024.**

sd/-V. Padmanabhan

I ADDITIONAL DISTRICT JUDGE
TIRUNELVELI.

Both side Witnesses and Documents: Nil

sd/-V. Padmanabhan

I ADDITIONAL DISTRICT JUDGE
TIRUNELVELI.

I Additional District Court,
Tirunelveli.

IA No.4/23 in OS No.102/2020

ORDER (Draft/Fair)

Dt; 06.08.2024