

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI

PRESENT: Tmt. **V. Vannamalar**, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Friday, the 4th day of November 2022

I.A.No.3/2021

in

O.S.No.15/2021

Umamageshwari

...Petitioner/Plaintiff

-Vs-

1. Mahendran
2. Devendran
3. Chinnaraj

...Respondents/Defendants

This petition came up before me for final hearing on 04.11.2022, in the presence of Mr. S. Saravanan, learned counsel for the Petitioner/plaintiff and Mr. K. Purushothaman, learned counsel for the Respondents/Defendants. Upon perusing the material case records and on hearing the arguments of both side counsels and having stood over for consideration till this date, this court delivers the following:

ORDER

This petition is filed by the petitioner under Order XXVI Rule 9 and Sec.151 of CPC to appoint an advocate commissioner to inspect the suit property along with the Taluk Deputy Surveyor, to demarcate the suit property and to note down the physical features and to file a report with sketch.

2. Brief averments of the affidavit filed by the petitioner are as follows:

The petitioner who is the plaintiff in the suit submits that her husband by name Nagaraj succeeded to as owner of the petition mentioned property and that she is in

possession and enjoyment of the same after the death of her husband till date along with her two children. She has also mutated the revenue records for the petition mentioned property in her name. The respondents who are neighbors to the said property have no right and interest in the said property. In the 1st week of January 2014 for constructing a house, the petitioner, when tried to raise columns for the proposed structure, the 1st defendant who is the owner of the property on the western side of the suit property with the support of the 2nd and 3rd defendants objected to the same. The petitioner has also made attempts several times to measure the suit property with the help of surveyor but in view of the objections made by the 1st defendant, the surveyor was unable to measure the suit property. Since, the respondents are raising boundary dispute, if an advocate commissioner along with Taluk Deputy surveyor is appointed to inspect and to demarcate the suit property and to note down its physical features it would help this court to appreciate the right and contentions of both the parties. Hence, this petition.

3. The averments set out in the written statement filed by the 1st defendant which is adopted by the 1st respondent as counter to this petition is as follows:

3.1. The 1st respondent who is the 1st defendant in the suit submits that he and his brother namely G. Sugumar are the absolute owners of the Grama Natham house site and house comprised in Grama natham Old Survey No.42/2 (Part) and New Survey No.42/17B measuring an extent of 0.03 cents situated at Bajanai Koil Street, Periyakavanam Village, Ponneri Taluk, Tiruvallur District.

3.2. The 1st respondent further submits that originally the above said property along with another extent of 0.03 cents in all totally 0.06 cents, were owned and possessed by one Jayammal, from whom this defendant's paternal grandfather namely Muniyan had purchased 0.06 cents of land by virtue of deed of sale dated 09.12.1962 vide Doc.No.1431/1963 registered with Sub-Registrar Office at Ponneri. Ever since the date of purchase this defendant's paternal grand father Muniyan was in absolute possession and enjoyment of the total extent of 0.06 cents of land. The above said

Muniyan died intestate on 07.04.1974 leaving behind his sons M. Subramani and M. Govindaraj as his surviving legal-heirs to inherit his estates. After the demise of above said Muniyan his sons have jointly possessed and enjoyed the said properties. While this being so on 14.12.1998 there was an oral partition effected between the Subramani and Govindaraj before the Village Panchayatars. Wherein they have divided their property into two equal shares (i.e.) 0.03 cents each and southern portion of 0.03 cents was allotted to the share of Subramani and Northern portion of 0.03 cents was allotted to the share of Govindaraj, who is the father of this 1st respondent. The said Govindaraj had constructed a house in the share of land allotted to him. This defendant's paternal uncle had also constructed a house in the share of land allotted to him, where they are residing with their respective families.

3.3. This defendant state that his father Govindaraj had settled the 0.03 cents to in favour of his sons namely Sugumar and Magendran by a deed of settlement dated 14.06.2013 vide Doc.No.7852/2013 registered with Sub-Registrar office at Ponneri. Similarly Subramani was also settled his share to and in favoour of his son Kumar by a deed of settlement, dated 22.01.2014, vide Doc.No.365/2014 registered with SRO Ponneri. The revenue authorities had already issued Grama Natham Patta No.69 for the Grama Natham survey No.42/17 measuring an extent of 0.02.5 hectare i.e. 0.06 cents and after the division of the above said 0.06 cents property into two equal shares, it was sub-divided as Grama Natham survey No.42/17A in the name of Kumar and Grama Natham survey No.42/17B in the name of the 1st respondent and his brother. The petition mentioned property is situated on the eastern side of the 1st respondent's property, the 1st respondent is having access in between the petition mentioned property and the 1st respondent's house to reach the main road as well as the rear side of the 1st respondent's property.

3.4. The 1st respondent further submits that the respondent's house being bounded on east by the petitioner's land, North by 2nd respondent's land, West by 3rd respondent's land and south by the 1st respondent's paternal uncle's house. While this being so

during the 1st week of January 2014, the petitioner made an attempt to construct a house in the petition schedule property by digging soil from this respondent's property. Where the 1st respondent is using the passage on the western side of the petition schedule property, the petitioner had tried to illegally occupy the 1st respondent's land and made an attempt to construct a wall in the 1st respondent's property, which was prevented by the 1st respondent. The 1st respondent is always ready and willing to sort out boundary issues with his neighbours and ready to cooperate with the revenue officials in this regard.

4. Even after service of notice to the 2nd and 3rd respondents, they failed to appear before this court and hence were set exparte.

5. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court. Now, it is the paramount duty of this court to decide whether this petition is to be allowed or not?

6. Heard both sides. Records perused.

7. Upon careful consideration of the above this court finds that this application has been filed by the Petitioner to appoint an advocate commissioner along with the assistance of Taluk Surveyor to demarcate the petition schedule property, to note down its physical features and to file a report with sketch. The petitioner contends that she has inherited the petition schedule property upon the death of her husband and is in possession of the same along with her children. When she had tried to put up construction in her property the 1st respondent along with the support of the other respondents raised certain issues and prevented her to construct a house in the said property. On the other hand the 1st respondent contends that he is the owner of the neighbouring land situated to the west of the petition schedule property and that the petitioner made an attempt to construct a house in her property by digging soil from the 1st respondent property. The 1st respondent has further submitted that he is

always ready and willing to sort out boundary issues with his neighbours and he is ready to cooperate with the revenue officials.

8. Even in the present case the only dispute is with regard to the boundaries in the petition property. The 1st respondent has also in his written statement indicated to appoint an advocate commissioner. This court also views that it is a fit case to order for appointment of an Advocate Commissioner as the dispute is in respect of the identification of property so as to elucidate the facts that in whose boundaries the disputed area is located. There would be no prejudice caused to the respondents/defendants in allowing this petition. On the other hand, when the very dispute is concerned as to boundaries, it would be appropriate to obtain the report of an advocate commissioner as to throw light on the issues and would also help the court in deciding the matter with clarity. Hence, this court is inclined to allow this petition.

In the result, this petition is allowed. Mrs. U.Selvi, Advocate is appointed as an Advocate Commissioner and she is directed to inspect the suit schedule property after giving due notice to both the parties, measure the same with concerned VAO and Firka surveyor and if necessary measure the property of the 1st respondent with the help of title documents of both parties, fix the boundaries, note down the physical features thereon and file a detailed report with plan on or before 06.12.2022. Her remuneration is fixed at Rs.5,000/- and the petitioner is directed to pay the same to the Advocate commissioner directly. Commissioner report and plan by 06.12.2022.

Dictated by me to the steno-typist, who directly typed the same, corrected and pronounced by me in the open court, on this the 4th day of November 2022.

S.d./- V.VANNAMALAR
DISTRICT MUNSIF
PONNERI

List of witnesses on the side of the petitioner

NIL

List of documents on the side of the Petitioner

NIL

List of witnesses on the side of the respondents

NIL

List of documents on the side of the respondents

NIL

S.d./- V.VANNAMALAR
DISTRICT MUNSIF
PONNERI

Fair/ Draft Order
I.A.No.3/2021
O.S.No.15/2021
Date:04.11.2022
DMC,PNI.