

IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI

Present : Tmt. S. KAVI PRIYA, B.A., LLB.,
District Munsif, Tiruttani

Dated this Thursday, the 16th Day of December 2021

IA.No.2/2021 in OS.No.17/2021

....

A. Dhanalakshmi

...Petitioner/ Plaintiff

/Versus/

1. K. Kannappa Naidu
2. K. Rajendiran
3. K. Indiraseanan

...Respondents/Defendants

This petition came up before me for final hearing on 26.11.2021 in the presence of M/s. R. Rajeshwara Babu, Advocate for petitioner and M/s. V. Kishore reddy, E. Vijayakumar, and A. Akila, Counsels for respondents, upon hearing both side, after perusing records and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition is filed under order 26 Rule 9 of CPC to appoint an Advocate Commissioner along with Taluk Surveyor to inspect the suit property and fix the boundaries and note down the physical feature and to file report with rough sketch.

Petition filed on behalf of the petitioner in brief in as follows:

2. The petitioner is the absolute owner of the schedule property. The petitioner have purchase the same by virtue of Reg. Sale deed dated 24.07.2019. The

said is for good and valid consideration. The sale deed has been acted upon. On the day of sale itself the petitioner have took possession of the suit property. The petitioner have developed the vacant land by leveling it made reclamations and development. The schedule property originally belonged to one S.M. Annamalai who died intestate leaving behind S.A. Thulasi has his wife and 4 sons and one daughter legalheirs to succeed his estate. This suit property was allotted to this Plaintiff's vendor S.A. Thulasi in family arrangement. The second son also Solainatha as attested the sale deed. The sale is for good and valid consideration. The sale deed has been executed in lawfully and in properly valued stamp papers. Excepting the petitioner no other person has got any right title or interest to the schedule property. While so the Defendants 1 to 3 who have no manner of any right, title or interest attempted to interfere with his peaceful possession and enjoyment of the suit property, on the basis of sham and nominal and fictitious document. The petitioner have reported the matter to the Inspector of Police, Tiruttani police station. The S.I. of police enquired in detail and the defendants have an undertaking that they would not interfere with his lawful possession and enjoyment of the suit property. The police has stopped the action their after. The police advised to arrange the surveyor to measure the suit property. The petitioner taken steps to measure the suit property and the petitioner have appointed a surveyor on 27.10.2020 and the surveyor also fixed date on January 2021 to fix the boundaries but the defendants adamantly denied accepting that survey. The Defendants were forcefully, illegally trying to grab the petitioner's property. The Defendants are utter strangers. They are attempt to grab his

property by hook or crook. The Defendants have no right in the suit property and illegally trespassing. The acts of the Defendants are most high handed and unlawful. The petitioner have got primaface case and the balance of convenience is on her side.

3. Memo Filed by respondents counsel stating that the written statement may be adopted as counter in this petition

Counter in brief in as follows:-

4. This Defendant's father namely the 1st Defendant has purchased the property in Old Survey No.301/10 New survey No.301/12A to an extent of East to West 22 feet and North to South 70 feet in total 1540 Sq.feet as per the registered sale deed dated 04.05.1989 from its lawful owners with specific boundaries. Again this Defendant's father namely the 1st Defendant has purchased a property in Old Survey No.301/11 New S.No.301/12A2C/1A to an extent of East to West 22 feet and North to South 70 feet in total 1540 Sq. feet as per the registered sale deed dated 26.03.1993 from its lawful owners with specific boundaries. After the said purchases this Defendant's father the 1st Defendant took possession of the same and constructed two terraced houses in the year 1995 and residing there along with his family members and balance vacant site on the Northern portion in old S.No.301/11 New S.No.301/12A2C/1A also under the continuous possession and enjoyment of the Defendants. Thus this Defendant and other Defendants are in continuous possession and enjoyment of their property till date and not at all connected with the suit schedule property. The Plaintiff has to get unlawful gain over the suit property. It is crystal clear that the Defendants added in this suit are all unnecessary parties to this

suit and this will shows that the plaintiff has no right or title to the suit property. Hence the plaintiff has to prove her ownership and possession of the suit schedule property. By adding these Defendant the plaintiff is intended to create troubles to grab these Defendants property by getting any order against these Defendants under false pretext and the same should not be allowed to get wrongful gains by suppressing the real facts before this Court. There is no cause of action for this suit, the cause of action mentioned is wrong. Hence, this petition is liable to be dismissed.

Point for determination:-

5. Whether the petitioner is entitled to appoint an Advocate Commissioner?

Heard. Records perused.

Point:-

6. According to the petitioner, she is the absolute owner of the schedule property who purchased the same through Registered Sale deed dated 24.07.2019. The schedule property was originally belonged to one S.M. Annamalai who died intestate leaving behind his wife S.A. Thulasi and 4 sons and one daughter as his legalheirs to succeed his estate. The suit property was allotted to this Plaintiff's vendor S.A. Thulasi in family arrangement. The second son also Solainatha as attested the sale deed. While so the Respondents who have no manner of any right, title or interest attempted to interfere with the peaceful possession and enjoyment of the suit property on the basis of sham and nominal and fictitious document. Hence, the petitioner have reported to the same to the Inspector of Police, Tiruttani and enquiry was made in detail and the Respondents undertaken not to interfere with the

suit property. Hence, the police stopped the action thereafter the police advised to arrange the surveyor to measure the suit property. Hence, the petitioner took steps to measure the suit property and appointed a surveyor on 27.10.2020 and the surveyor also fixed date on January 2021 but the defendants adamantly denied accepting the survey and they are trying to dispose the petitioners and also try to grab the property. Hence, the petitioner filed the suit for permanent injunction and also filed this petition for Advocate Commission along with Taluk Surveyor to inspect the suit property.

7. But the Respondents have contended that the Respondents/ Defendants have namely 1st Respondent purchased the property in Old Survey No.301/10 New survey No.301/12A to an extent of East to West 22 feet and North to South 70 feet in total 1540 Sq.feet through a registered sale deed dated 04.05.1989. Again the 1st Respondent purchased a property in Old Survey No.301/11 New S.No.301/12A2C/1A to an extent of East to West 22 feet and North to South 70 feet in total 1540 Sq. feet as per the registered sale deed dated 26.03.1993. After the said purchases these Respondents took possession of the same and constructed two terraced houses and residing there along with his family members and balance vacant site on the Northern portion in old S.No.301/11 New S.No.301/12A2C/1A also under the continuous possession and enjoyment of the Respondents. Hence, on perusal of written statement the respondent disputed the title of the petitioner. Since the Petitioner filed this suit only for Permanent injunction without the prayer for declaration. Therefore without deciding the title of the suit property, Commission is

not maintainable. Hence, this petition is liable to be dismissed.

8. The petitioner have purchased the suit property on 24.07.2019 and the suit property survey number was old S.No.301/10, New S.No.301/12A/12C. But the Respondents have stated that they purchased the old S.No. 301/10, New S.No.301/12A and also S.No.301/11 New S.No.301/12A2C/1A in the year 1989 and 1993 and also constructed a house in the year 1995. Hence there was a dispute in the subdivision of the suit property. Moreover the petitioner have not filed any document to prove his possession, since there is dispute in the suit property. There is a cloud in the suit property. Hence in mere permanent injunction suit Advocate Commission cannot be appointed legally. It is the duty of the petitioner to approach the Court legally when the suit property was disputed and the title was in question. Therefore the petitioner can not collect evidence by appointing Advocate commission. The petitioner has to be taken necessary steps for declaration as stated by the Respondents herein. Hence this petition is not maintainable and liable to be dismissed without costs.

9. **In the result, this petition is dismissed without costs.**

Dictated to Steno - Typist and computerized by her directly, corrected and pronounced by me in open court, this the 16th day of December 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Both side Witnesses & Exhibits:- -NIL-

Sd/- S. Kavipriya
District Munsif,
Tiruttani.