

IN THE COURT OF THE DISTRICT MUNSIF AT TIRUTTANI

**Present : Tmt. G. PRIYA, B.A.,M.L.,**  
District Munsif (FAC)  
Tiruttani

Wednesday, the 26th day of April 2023

I.A.No.1 of 2023  
in  
O.S.No.70 of 2022  
(CNR No.TNTR21-000093-2022)

Thanigachalam

... Petitioner / Plaintiff

/Vs/

1. Natarajan  
2. Venkatesan  
3. Harikrishnan  
4. Ethirajulu

... Respondents / Defendants

This petition is coming on 31.03.2022 for final hearing before me in the presence of Thiru S. Karthikeyan, Counsel for Petitioner / Plaintiff, and Thiru A. Haridoss, and upon perusing the case records and arguments and having stood over for consideration till this day and this Court delivered the following

ORDER

Petition filed under Order 26 Rule 9 CPC, to appoint an Advocate Commissioner along with Surveyor, to inspect the suit properties and note down the physical feature, fix the boundary stone and file a detailed report with photographs.

2. Gist of averment in affidavit filed in support of the petition :-

The respondents / defendants are continuously disturbing the peaceful possession and enjoyment of the suit property of the petitioner / plaintiff, only because of Patta for the suit property stands in the name of 1st respondent / 1st defendant. Therefore, the petitioner filed this suit for injunction as against the respondents / defendants. Hence, the respondents / defendants are taking revenge on the petitioner / plaintiff and giving trouble to the petitioner / plaintiff. This court has vacated ad-interim injunction order on 18.11.2022, and the respondents are questioning the petitioners possession over the suit property. Hence, this petition, to appoint an Advocate Commissioner along with Taluk Surveyor.

3. Gist of averment in Counter filed by the Respondent :-

The petitioner / plaintiff has to prove his title to the suit property and possession, on the date of the suit by producing relevant records, such as Patta, Chitta, and Adangal for his enjoyment and payment of Kist. The petitioner cannot be allowed to file a petition to gather evidence or to collect evidence by appointing an Advocate Commissioner. Hence, this petition cannot be allowed. This petition is unwarranted and is to be dismissed in limini.

4. Points for consideration:-

*Whether the petition to appoint an Advocate Commissioner under Order 26 Rule 9 CPC, is to be allowed ?*

5. Points:-

Heard learned counsel for both parties. On perusal of records, this suit is filed by the Plaintiff for the relief of Permanent Injunction. The suit is in the stage of framing of Issues. At this stage, the petitioner / plaintiff has filed this petition to appoint an Advocate Commissioner along with Taluk Surveyor to note down the suit property and fix boundary stone.

6. Admittedly, the petitioner is claiming that, the respondents / defendants are continuously giving trouble to the petitioner with respect to the suit property. Since, the Patta for the suit property is in the name of the 1st defendant, and also the ad-interim injunction was vacated, the respondents are giving more trouble to the petitioner. If an Advocate Commissioner along with Taluk Survey is appointed and if they inspect the suit property and note down the physical features of the suit property, the entire problems would be resolved.

The respondents contested that, the petitioner / plaintiff has to prove his title to the suit property and possession, on the date of the suit by producing relevant records, such as Patta, Chitta, and Adangal for his enjoyment and payment of Kist. The petitioner cannot be allowed to file a petition to gather evidence or to collect evidence by appointing an Advocate Commissioner.

7. It is observed that the suit is filed for the relief of permanent Injunction and this petition is to appoint an advocate commissioner to note the physical features of the suit property, it is noted that it is necessary to know the present measurements and the position of the physical features of the suit property and hence it would be just and proper to appoint an Advocate Commissioner, to measure the suit schedule property with the help of Surveyor and file his report with sketch and plan, and by allowing this petition, no prejudice will be caused to the respondents, and for the relief claimed by the plaintiff in a suit, a local inspection of the property is mandated to adjudicate upon the reliefs claimed. Hence, this court is of considered view that, this petition seeking appointment of Advocate Commissioner deserves to be allowed.

In the result, this petition seeking appointment of Advocate Commissioner is allowed, and Advocate Thiru V. Parthasarathy, MS 3152/2010 is appointed as an Advocate Commissioner, and the Advocate Commissioner has to inspect the suit property along with the Taluk Surveyor, and note down the physical feature, noted down the fixed boundary stone and file a detailed report with photographs on 27.06.2023. The Commissioner fee is hereby determined as Rs.7,000/-, and it has to be paid by the petitioner to the Advocate Commissioner directly. Call on 27.06.2023.

Dictated to Steno Typist, and computerized by him directly, corrected and pronounced by me in the open Court, on the 26th day of April 2023.

Sd/- G. Priya  
District Munsif (FAC)  
Tiruttani

List of both side witnesses and documents : N I L

Sd/- G. Priya  
District Munsif (FAC)  
Tiruttani