

IN THE COURT OF THE SUBORDINATE JUDGE, SANKARANKOVIL

**PRESENT: Selvi. M.K. ANUSHA, M.L.,
Subordinate Judge,
Sankarankovil.**

Saturday, the 2nd day of September 2023
Sobakiruthu, Aavani Thingal – 16, Thiruvalluvar Aandu 2054

**Interlocutory Application No.1/2022
in
Original Suit No.166/2017**

1. Ganesan
2. Rani
3. Alaguvel
4. Palaniammal
5. Veerammal Natchiyar
6. Petchiammal
7. Pandiyan
8. Subbulakshmi
9. Veerammal Natchiyar
10. Pandiyan
11. Ganesan
12. Muthusamy
13. Krishnasamy . . . Petitioners/Plaintiffs

/Vs/

1. Gurusamy Devar
2. Pootchiammal
3. Ramasamy
4. Petchiappan . . . Respondents/Defendants

This application is coming up for final hearing before me on 25.08.2023
in the presence of Mr. M. Karuppasamy, Counsel for the Petitioners and

Dt: 02.09.2023
IA No.1/2022 in OS No.166/2017

M.K. Anusha,
Subordinate Judge, Sankarankovil

M/s. M. Banu, M. Aruna Counsels for the Respondents and upon hearing arguments and on perusal of available material records and having stood over for consideration before this Court till date, this Court delivers the following,

ORDER

This Petition is filed by the Petitioners under Order 26 Rule 9 and Section 151 of CPC., for appointment of an Advocate Commissioner to note down the physical features of the suit schedule of properties alongwith Surveyor.

2. The Petition averments in a nutshell is as follows:

The suit is filed by the Petitioners for the relief of declaration and permanent injunction. The Petition Second Schedule of property is the part and parcel of the Petition First Schedule of property. Moreover, during the pendency of the suit, the Respondents encroached the eastern adjacent side of petition second schedule of property and constructed building. Hence it is necessary to appoint an Advocate Commissioner to inspect the suit schedule of property with the help of a Surveyor and to file a report, alongwith sketch. Hence this Petition.

3. The Germane of the Counter are as follows:

The Petition is not maintainable either in Law or on Facts and to be dismissed in-limine. All allegations mentioned in the petition are false and untrue. The Petition Second Schedule of property is not the part and parcel of the Petition First Schedule of property. The Petition Second Schedule of property belongs to the Respondents No.1 and 2. These Respondents constructed the buildings prior to the suit and the same was stated in their Written Statement, which was filed on 29.11.2017. Moreover, Appointment of an Advocate Commissioner is

not necessary in this case. Only to drag on the proceedings, this Petition is filed by the Petitioners. Hence this Petition is to be dismissed.

4. The Points that arise for determination in the instant petition are as follows:

1. Whether the local investigation is necessary?
2. Whether the report of Advocate Commissioner is necessary for deciding controversy between the parties?
3. Whether the petition for appointment of Advocate Commissioner can be allowed?

5. Neither oral evidence adduced, nor documents marked on the either side. Both sides heard. Records perused.

6. **Point Nos.1 to 3:**

The application for appointment of Advocate Commissioner is filed by the Petitioners/Plaintiffs to note down the physical features alongwith Surveyor. The suit is filed for the relief of declaration that Suit Second schedule of property belongs to the Plaintiffs and one Petchiappan and also consequential relief of permanent injunction, restraining the Defendants from interfering with peaceful possession of Plaintiffs and Petchiappan in the suit second schedule of property.

7. The Petitioners/Plaintiffs claim title, right, interest over the suit schedule of properties. The Suit Second Schedule of property is an encroached portion, which is part and parcel of Suit First Schedule of property. The

Respondents/Defendants denied the encroachment. They contended that they never encroached the Suit Second schedule of property.

8. Considering the submissions and rival submissions, the issue between the parties are related to encroachment in the suit properties. This Court is to decide the controversy between the parties, Whether the Suit Second Schedule of properties belong to Plaintiffs absolutely? and Whether the Suit Second Schedule of property, which is described as part and parcel of Suit First Schedule of property, was encroached by the Defendants?

9. The report of the Advocate Commissioner after making local investigation to ascertain the encroachment is necessary to decide the controversy and real dispute between the parties. Therefore, this Court is of opinion that Commissioner Report and Plan is necessary for deciding the controversies between the parties. The report of the Advocate Commissioner will benefit both the parties. The essential ingredients contemplated under Order 26, Rule 9 is fulfilled. This is the fit case to exercise the discretionary power. The relief as to appointment of Commissioner is allowed.

10. For the reasons stated above, the points are decided accordingly.

R E S U L T

11. In the result, the Petition for appointment of Advocate Commissioner is allowed and no costs. Mr. M. Mahesh Kumar, Advocate is appointed as an Advocate Commissioner and the remuneration of Advocate Commissioner is fixed at Rs.7,000/- (Rupees Seven Thousand Only) and the Petitioners are directed to pay the remuneration either directly or by way of deposit in

this Court. The Petitioners are directed to file proof of remuneration to this Court. The Advocate Commissioner thereafter is directed to fix a date for local investigation and also to give notice to both parties regarding date and time for inspection. The Advocate Commissioner is directed to make local investigation alongwith Surveyor as sought in the petition and directed to file a report to this Court.

Dictated by me to the Steno-typist, Computerized by him directly in the Computer, Corrected and Pronounced by me in the open Court on this the 2nd day of September 2023.

Subordinate Judge,
Sankarankovil.

Witnesses examined on the side of the Petitioners: Nil

Witnesses examined on the side of the Respondents: Nil

Exhibits marked on the side of the Petitioners: Nil

Exhibits marked on the side of the Respondents: Nil

Dated at Sankarankovil, Tirunelveli District this the 2nd day of September 2023

Subordinate Judge,
Sankarankovil.

Sub Court, Sankarankovil

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Draft /Fair Order

Dated: 02.09.2023

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M.K. Anusha,
Subordinate Judge, Sankarankovil