

IN THE COURT OF THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI.

Present: Thiru. M.Udhayavelavan, B.L.,
II Additional District & Sessions Judge,
Thoothukudi.

Thursday, this the 20th day of June 2024

I.A. No. 6/2024
in
O.S. No. 35/2018

J.G. Rajasundaram

.. Petitioner / Plaintiff

/Vs/

1) J. Flawrance

2) A. Kanagamani

3) J. Thangadurai

4) D. David Koilraj

5) A. Saravanakumar

6) J. Vasunthra

7) R. Dhanalakshmi

..Respondent/Defendant

This petition is coming before me for final hearing on 06.06.2024 in presence of Thiru.D.Thomas, Learned Advocate for Plaintiff and Thiru.S. Shanmugasundaram, Learned Advocate for 1 to 5th respondent and Tmt.V.Neelaveni, Learned Advocate for 6th respondent and upon hearing both side arguments and on perusal of records and having stood over till this day for consideration of this court, this court delivers the following:

ORDER

1. This petition has been filed by the petitioner/plaintiff under Order XXVI Rule 9 and 10 of Code of Civil Procedure to appointment an advocate commissioner.

2. The case of the petitioner is that he has filed the suit for relief of partition and demarcation of second schedule suit property. As the first defendant has tried to put up construction in the second item of suit property, on noticing the steps taken by the petitioner to file the suit. Hence, in order to demarcate the suit property and decide the issues involved in the suit, appointment of Commissioner is necessary. Hence, the petitioner has filed this petition.

3. Refuting the contention of petitioner, the respondents 1 to 5 /Defendants would contend that the petitioner has filed this application after a lapse of six years from the date of filing of the suit. Further the petitioner could not seek appointment of Commissioner to collect evidence for his case. Hence, the respondents 1 to 5 pray for dismissal of petition.

4. As the same, 6th respondent, resisting the application for appointment commissioner would contend that the petitioner has pleaded as respondent has taken steps to construct a building, on noticing preparation of the petitioner to file suit. But, he has filed this petition after a lapse of six years. Further for collecting evidence Commissioner could not be appointed. Moreover the petitioner pleaded survey sketch has to be ignored and rough sketch prepared by him has to be considered in measuring the suit property. But, the said contention of petitioner is not an acceptable one. The respondents have purchased their respective property and after the same, sub-dividing enjoyed it. Hence, appointment of Commissioner in this case is not necessary. Accordingly, 6th respondent prayed for dismissal of this petition.

5. Points for consideration :

1 . Whether the appointment of advocate Commissioner is necessary to decide the issues involved in the suit?

6. Point No.1:-

Admittedly the petitioner has filed the suit for demarcation of Second Schedule of suit properties, from the first schedule of suit properties, seeking partition of his 5/6 shares, over 4th schedule of suit property, out of the 1 Acre 12 cents comprised in Survey No. 1533 described as 3rd Schedule of suit properties.

5. As per the contention of petitioner after, alienating eastern 50 cents and western 50 cents out of the 2.12 Acres comprised in Survey No. 1533, 1.12 Acres alone remain for disposal in the hands of original owner Ponnammal, and pleaded in the plaint as 1.50 Acres have been sold. Hence, there arises a dispute as to availability of land to the extent of 1.50 Acres. Moreover the plaintiff sought the relief of demarcation. Hence, though respondents have contended as, for collection of evidence, commissioner could not be appointed, in this case as discussed above when dispute arises as to measurement of suit property, availability of the same in actual lie, to prove the same, this court could not expect both parties to adduce physical evidence. In reason of the same, without making local inspection and measuring of suit properties, issues involved in the suit could not be resolved.

6. In view of the above discussion, this court comes to conclusion that appointment of advocate Commissioner, to inspect the suit property with the help of

Surveyor is necessary. Accordingly, this is points to be answered.

7. In the result, this petition is allowed on the following terms:-

1. Advocate Thiru. A.Azhaguraja is appointed as advocate Commissioner to inspect and measure the suit properties, with the help of Taluk Surveyor, based on the Revenue records as well as Title deeds of both the parties, after giving due notice to both the parties concerned.
2. The remuneration of Commissioner is fixed at Rs. 10,000/- payable by the petitioner on or before 03.07.2024.
3. The warrant is ordered to be issued to Commissioner after the receipt of remuneration by advocate Commissioner. For Commissioner report. Call on 11.07.2024.

This order is dictated by me to the stenographer and typed by her in the computer and corrected by me and pronounced in the open court in this 20th day of June 2024.

Sd./M.Udhayavelavan,
II Additional District Sessions Judge,
Thoothukudi.

Draft/Fair Order
I.A.No. 6/2024
in
O.S. No.35/2018
Dated: 20.06.2024

