

IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM, VELLORE DISTRICT.

**Present : Thiru.M.N.Rajanandhivarmasiva, B.E., L.L.B.,
District Munsif, Gudiyattam.**

Tuesday, the 5th day of December 2023

IA.1/2023 in OS.155/2015

CNR.No.TNVL10-000232 – 2015

Harikumar.

...Petitioner/Plaintiff.

// Versus //

Prakasam.

...Respondent/Defendant.

This petition came up on 05.12.2023 before me for final hearing in the presence of **Thiru.K.Moganaraju, B.Sc., B.L.,** Advocate for Petitioner/plaintiff **Thiru.K.M.Boopathi., M.L.,** for the Respondent/Defendant upon hearing both sides and having stood over for consideration, this court delivered the following

ORDER

Petition filed Under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate Commissioner to inspect and to measure the petition mentioned propertie with the help of VAO and Taluk Head Surveyor as per the petitioner documents and the Village FMB and Revenue Records and pass such other orders according to the circumstances of the case.

I. Brief Averments of the Petition :-

1.1. Originally, petition mentioned proeprties belongs to petitioner's grand father Ayyasamy Bojan and after death of the Ayyasamy Bojan petitioner's father Rangan was in the possession and enjoyment of the petition mentioned property. The above said Rangan was died on 11.07.2011 leaving behind the petitioner, mother and his brothers and sisters. Now, the petitioner is in the possession and enjoyment of the

suit property.

1.2. The respondent/defendant are absolutely third parties to the petition mentioned property and he unwanted title over the suit property and they have nothing to do with the suit mentioned property. Hence, in order to find real truth and Advocate Commissioner as appointed to measure the property with help of the Taluk, Head Surveyor Pernambut Taluk and if he files report with plan and it will be minimize the oral evidence and also it will be use full to decide the question and issues. Hence, this petition has to be allowed in the interest of justice.

II. Brief Averments of the Counter :-

2.1. The petitioner's father Rangan and his grandfather Ayyasamy Boyan have already filed a suit for declaration and injunction regarding the same suit proeprty in S.No.234/3 extent 0.75.5 hectare, Acres 1.86 cents against this defendant's father Erusan and others before this Court vide OS.No.66/1998 and another suit in OS.No.694/1996 and those suits were dismissed after contest. Now, once again the plaintiff has filed the present suit for permanent injunction by suppressing earlier proceedings of the suit property with false and baseless alelgations.

2.2. The petitioner has filed the suit for permanent injunction based on alleged patta and documents and there is no necessity to measure the properties as alleged in the plaint. In order to collect evidence and to prove possession of the suit properties, the petitioner without contest the case filed the present application with an intention to drag on the proceedings. Tracing of title over the suit property itself is not correct

and it is wrong and invented for the purpose of filing the present suit. The mere inspection of the Advocate Commissioner as alleged in the present application will not minimize the oral evidence let in by the parties. The petition is unnecessary one and filed with ulterior motives. The law is also very clear that an Advocate Commissioner could not be appointed to collect evidence and also find out possession. The present application as filed by the petitioner is not maintainable under law. Therefore, dismiss the petition.

No oral evidences adduced on either side, and no documents marked on either side.

Heard both sides and records perused

III. Point for Considerations: -

Whether the petition is to be allowed or not?

3.1. Petitioner contended that respondent/defendant are absolutely third parties to the petition mentioned property and he unwanted title over the suit property and they have nothing to do with the suit mentioned property. Hence, in order to find real truth and Advocate Commissioner as appointed to measure the property with help of the Taluk, Head Surveyor Pernambut Taluk and if he files report with plan and it will be minimize the oral evidence and also it will be use full to decide the question and issues. Respondent contended that this defendant's father Erusan and others filed suit before this Court vide OS.No.66/1998, OS.No.694/1996 and those suits were dismissed after contest. Now, once again the plaintiff has filed the present suit for permanent injunction by suppressing earlier proceedings of the suit property with

false and baseless allegations. The petitioner has filed the suit for permanent injunction based on alleged patta and documents and there is no necessity to measure the properties as alleged in the plaint. In order to collect evidence and to prove possession of the suit properties, the petitioner without contest the case filed the present application with an intention to drag on the proceedings. Tracing of title over the suit property itself is not correct and it is wrong and invented for the purpose of filing the present suit. The mere inspection of the Advocate Commissioner as alleged in the present application will not minimize the oral evidence let in by the parties. The petition is unnecessary one and filed with ulterior motives. Therefore, dismiss the petition.

3.2. The suit filed for against the respondent/defendant for permanent injunction. The plaintiff filed application for appointment of Advocate Commissioner to inspect the property to note down the physical features of the schedule mentioned suit properties with the help of VAO and Taluk Head Surveyor as per the Village FMB and Revenue Records. This Court after analysing the both side arguments and the careful consideration and on perusal of documents filed by both sides. It seems that this suit is filed by the petitioner/plaintiff for Bare injunction. But now the petitioner filed this petition to appoint an Advocate Commissioner to find the truth, as per the Hon'ble Apex Court decision in many cases, the Advocate Commissioner report is not to collect evidence and to prove the possession. Therefore, viewing in any angle the petition filed by the petitioner for appointment of advocate commissioner is not maintainable. In fine this Court declines to allow this petition.

In the result this petition is dismissed with cost.

Directly Dictated to Steno typist, typed by her corrected and pronounced by me in the open Court on this the 5th day of Dcember 2022.

**Sd/-M.N.Rajanandhivarmasiva,
District Munsif,
Gudiyattam.**

Both side Witnesses and Exhibits :- Nil

**Sd/-M.N.Rajanandhivarmasiva,
District Munsif,
Gudiyattam.**