

IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,
(J.O.Code – TN02266)
DISTRICT MUNSIF, KATPADI

Wednesday, this the 26th Day of March – 2025

I.A.No. 1 of 2024
In
O.S.No. 11 of 2020
(CNR.No.TNVL23-000018-2020)

Savitri Ammal

.....Petitioner/Plaintiff

-Vs-

1. Ramaiah
2. Stella @ Mary

.....Respondents/Defendants

This petition is come up today before this Court for orders, and upon hearing the argument of Thiru. A.Ramesh, the Counsel for the Petitioner, and Miss. S.Sugasini, the Counsel for the 2nd Respondent, and the 1st Respondent was set Ex-parte in the main Suit itself, and upon perusing the petition, counter and the case records, and having stood over for consideration till this date, this Court delivers the following:-

ORDER

This petition has been filed by the Petitioner/Plaintiff under Order 26 Rule 9 and Section 151 of Code of Civil Procedure, to appoint an Advocate Commissioner to inspect the Suit properties with the help of Taluk Surveryor, Katpadi, VAO along with

the help of relevant Revenue Records to take measurements of the Suit properties, and also to note down its Physical features, and submit a report along with the Photo, Sketch.

1. **Brief averments of the affidavit filed by the Petitioner is as follows:-**

The Petitioner is the Plaintiff in the above Suit, and she have filed the above Suit for the relief of Permanent Injunction restraining the Defendants, their men and agents from putting up further constructions in the Suit 'B' Schedule property and for Mandatory Injunction directing the Defendants to restore the Suit 'B' Schedule property to its original position as it existed, if failing which the same may be effected by due process of law as against the Respondents/Defendants.

1.1 The Respondent/Defendants have encroached 3 feet by 34 feet by construction and trying to encroach further 3 feet and wants to annexed with the Petitioner property. As already stated the Electric Lines for the Petitioner property are only in that 6 feet passage. The space was left for carrying out for repairs if any in the Suit property and ventilations are provided. Due to the high handed act of the Respondents/Defendants, the Petitioner/Plaintiff's right of light and ventilation are also prevented because of the encroachment by the Respondents/Defendants.

1.2 Whether there is any encroachment or not in the Suit property? Hence, the Advocate Commissioner have to be appointed to inspect the Suit properties with the help of Taluk Surveyor, Katpadi, VAO along with the help of relevant Revenue Records to measure the Suit properties. If this petition is allowed, no prejudice will be caused to

the Respondents. On the other hand, if this petition will not be allowed, then the Petitioner will be put to irreparable loss and hardship, and prayed to allow the petition.

2. Brief averments of the Counter filed by the 2nd Respondent is as follows:-

The 2nd Respondent stoutly and vehemently denies all the allegations and averments contained in the petition as utter falsehood, bereft of truth, baseless, untenable and puts the Petitioner to strict proof of the same. The 2nd Respondent specifically states that the Respondents put up construction in respect of the Suit 'B' Schedule mentioned property is totally false, and the Respondents encroached 3 feet by 34 feet by a construction and encroachment further 3 feet of the Petitioner's property are also false.

2.1 Further, the 2nd Respondent denies that the Petitioner put the Electric Line in her 6 feet passage, which was left for carrying out for repairs and ventilations, and states that the Petitioner had constructed her house in the total area, and she did not left any space for ventilation. It is specifically admitted by the 2nd Respondent that she did not object for Appoint an Advocate Commissioner for inspect and survey of the Petitioner's property, and this Court may direct the Advocate Commissioner to survey the Suit property based on the Sale Deed dated 14.09.1981 vide Doc.No.3448 of 1981. Thus, the 2nd Respondent prays to allow this petition with the above conditions.

3. Neither the Petitioner nor the Respondents have placed any oral or documentary evidence before this Court.

4. **Point for Determination:-**

- a) Whether the petition is entitled to be allowed or not?

5. **Answering to the Point:-**

Both sides heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and considering the argument advance by the both sides, it is found that the Suit has been filed by the Plaintiff (the Petitioner herein) as against the Defendants (the Respondents herein) for a relief of Permanent Injunction restraining the Defendants and their men, agents from putting up further construction in the Suit 'B' Schedule property, and also for a relief of Mandatory Injunction directing the Defendants to restore the Suit 'B' Schedule property to its original position as it existed, failing which the same may be effected by due process of law, and for costs.

5.1 In the above Suit, after receipt of Summons, the 1st Defendant had appeared in person, and he took sufficient times but he failed to file his Written Statement, and thereafter, he remained absent and was called absent, and set Ex-parte on 20.12.2020. The 2nd Defendant alone has filed Written Statement on 05.01.2023, and then, Issues were framed as early as on 31.01.2023, and posted for Trial. When the above Suit stands posted for Trial for several hearings, instead of commence the Trial, the Petitioner has come forwarded filed the present petition to Appoint Advocate Commissioner to inspect the Suit properties with the help of Taluk Surveryor, Katpadi, VAO along with the help

of relevant Revenue Records to take measurements of the Suit properties, and also to note down its Physical features, and submit a report along with the Photo, Sketch.

5.2 It is very useful to extract the Suit Schedule of properties for better appreciation:

SCHEDULE OF PROPERTY

“A” Schedule

“வேலூர் மாவட்டம், காட்பாடி வட்டம், காட்பாடி சப்டி, தாராபடவேடு கிராமத்தில், கிராம நத்தம் சர்வே 375/1A நெம்பரில் முத்து வாத்தியார் வீதியில் வீதிக்கு தெற்கு, கொண்டைய்யா வீட்டுக்கு கிழக்கு, நடராஜ பாரியாள் தனம்மாள் வீட்டுக்கு மேற்கு, ரயில்வே காம்பவுண்டுக்கு வடக்கு, இதன் மத்தியில் கி.மே 78 அடி, வ.தெ 34 அடி, ஆக மொத்த சதுரடி 2652 உள்ள மனையில் கி.மே 6 அடி மற்றும் வ.தெ 34 அடி நீங்கலாக, 72 அடி வரை கட்டியுள்ள தரை தளம் மற்றும் மேல்மாடியில் கட்டியுள்ள 9 வீடுகளும், அதில் அமைந்திருக்கும் அனைத்து கட்டு கோப்பு சாமான்களும் மற்றும் மேற்படி மனையில் 146 அடி நீளம் உள்ள கடகால் கட்டிடம் உட்படி இதற்கு பாத்தியப்பட்டதாகும்.

“B” Schedule

வேலூர் மாவட்டம், காட்பாடி வட்டம், காட்பாடி சப்டி, தாராபடவேடு கிராமத்தில், கிராம நத்தம் சர்வே 375/1A நெம்பரில் முத்து வாத்தியார் வீதியில் வீதிக்கு தெற்கு, கொண்டைய்யா வீட்டுக்கு கிழக்கு, வாதி கட்டியுள்ள 72 அடி கி.மே, வ.தெ 34 அடியுள்ள வீடுகள் மற்றும் 6 அடி கி.மே, வ.தெ 34 அடி உள்ள இடத்திற்கு மேற்கு, ரயில்வே

காம்பவுண்டுக்கு வடக்கு, இதிலுள்ள ஆக மொத்த சதுரடி 6 அடி x 34 அடி = 204 சதுரடிகள்.”

5.3 It is evident from the above facts, it is very clear that the Suit properties are constructed Houses situated in Dharapadavedu Village. According to the Plaintiff, the Plaintiff is the absolute owner of the Suit ‘A’ Schedule property, and she purchased it on 14.09.1981 and registered the same as Doc.No.3448/1981, and she has constructed a House, and was in possession and in absolute enjoyment of the same with her family members. The Defendants are neighbours on the Eastern side of Suit ‘A’ Schedule property. The said Kondaiah as mentioned in the Sale Deed as one of the Boundary is the Grandfather of the 1st Defendant. The Plaintiff has constructed 5 Houses in the Ground Floor, and 4 Houses in the First Floor of the Suit ‘A’ Schedule property, and they are residing in the Last House in the Ground Floor abutting the Defendants House.

5.4 The Plaintiff has left 6 feet breadth out of 78 feet East to West and in length 34 feet North to South which is shown as Suit ‘B’ Schedule in the Plaintiff. Only in that place E.B Connection wires are passing. On 25.01.2010, the Defendants with an ulterior motive started encroaching 6 feet (out of 78 feet) in breadth and 34 feet in length totally measuring 204 Sq.ft by raising a Construction and tried to annexe their property with the Plaintiff’s Suit ‘B’ Schedule property which is forms part of the Suit ‘A’ Schedule property.

5.5 In spite of Plaintiff's objections, the Defendants started construction and gone to the Police Station on 28.01.2020 by lodging vexatious complaint against the Plaintiff. The Defendants in a high handed manner influenced the Police Authorities for their illegal construction and threatened the Plaintiff with dire consequences. The Plaintiff has issued a Lawyer Notice on 31.01.2020 to the 2nd Defendant, Inspector of Police, Katpadi Police Station, and a copy to the Superintendent of Police, Sathuvachari, Vellore.

5.6 The Plaintiff is having title in the encroached portions i.e., Suit 'B' Schedule property by the Defendants, hence she restricts herself and filed the present Suit for the relief of Permanent and Mandatory Injunctions. The Defendants have already encroached 3 feet by 34 feet by a construction and trying to encroach further 3 feet and wants to annexe with the Plaintiff's property. The Space was left for carrying out for repairs if any in the Suit property and ventilations are provided. Due to the high handed act of the Defendants, the Plaintiff's right of light and ventilation are also prevented because of the encroachment by the Defendants. Since, the Defendants are having lot of men power and trying to complete the construction by annexing their property to the Plaintiff Suit 'B' Schedule property.

5.7 Therefore, the Plaintiff has filed the present Suit for the relief of Mandatory Injunction to remove the encroachments made in 6 feet by 34 feet and the same has to be

restored to its original condition, and for a relief of Permanent Injunction not to put up any further construction in Suit 'B' Schedule property.

6. It is useful to refer the provision of Order 26 Rule 9 of the CPC is very clear and for the ready reference the same is reproduced below:-

“9. Commissions to make local investigations:- In any Suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profit or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

6.1 It is clear from the above that during pendency of the trial and before the judgment if the Court finds that any issue requires clarification or elucidation, the Court may suo-motu appoint Commissioner to submit the report for which no application is required.

6.2 The scope of Order 26 Rule 9 of the CPC is very limited. The Court in any Suit in which a local investigation is required or proper for purpose of elucidating any

matter of dispute may appoint a Commissioner. It is true that Order 26 Rule 9 of CPC empowers the Court to appointment Advocate Commissioner to make local investigation as it finds fit and proper based on the facts and circumstances of the case. It is apposite to mention that it is not the aim of Order 26 Rule 9 of CPC to assist a litigant to collect evidence, where the litigant can get evidence himself. The parties cannot use the Court proceedings to collect the evidence.

6.3 It is settled law that the parties are required to prove their own case by way of evidence, therefore, it is the duty of the Plaintiff/Defendant to first give evidence in support of their case. After the evidence of parties, if Court deems it proper that an issue requires clarification then the Court may appoint a Commissioner. The report of Commissioner is merely a piece of evidence and not binding on the Court. It can be used for the purpose of appreciating the evidence came on record.

7. Upon careful consideration of the entire case records, it is noted that the Suit has been filed by the Petitioner/Plaintiffs for the relief of Permanent Injunction as against the Defendants restraining them from putting up further constructions in the Suit 'B' Schedule mentioned property, and also for Mandatory Injunction to direct the Defendants to restore the Suit 'B' Schedule property to its original position as it existed, if failing which the same may be effected by due process of law.

7.1 The Petitioner/Plaintiff alleged that the Respondents/Defendants have already encroached 3 feet by 34 feet by a construction in Suit 'B' Schedule property

which is form part of Suit 'A' Schedule property, and further, they are trying to encroach further 3 feet and wants to annexe with the Plaintiff's property. But, the 2nd Respondent denied the same. In this Suit, the issues were framed as early as on 31.01.2023. In order to determine the said issues, more particularly, in respect of any encroachment made if any by the Defendants as alleged by the Plaintiff, and to order Mandatory Injunction as against them, it is just and necessary to this Court to elucidate the matter in dispute & to find out that is there any encroachment in the 'B' Schedule property.

7.2 In such case, mere oral evidence will not suffice in deciding the issue of encroachment unless a local investigation is conducted. Hence, this Court is of the view that appointment of an Advocate Commissioner is necessary to elucidate the ground realities. Hence, this Court is inclined to allow the petition. Accordingly, this point is answered in favour of the Petitioner.

8. **Result:-**

In fine, in the interest of justice, this petition is allowed. An Advocate **Thiru.P.G.Balaji (Enrollment No. Ms.2036/2000)** is appointed as Advocate Commissioner, and he is directed to inspect the petition Schedule mentioned properties and to take measurements of the same with the help of a Taluk Surveyor, Katpadi, VAO, Dharapadavedu Village, along with the help of relevant Revenue Records, and also to note down its physical features, and take photographs if needed on the cost of Petitioner/Plaintiff, and prepare a Rough Sketch, and submit a report into this Court.

The following directions are issued to the Court Commissioner and also the Government Authorities to assist the Court Commissioner to carryout the Warrant.

- (i) The Court Commissioner is directed to inspect the petition Schedule mentioned properties after issuing advance notice to both sides. If any memo of inspection is given by any of parties it should be received by the Court Commissioner and the same may be considered subject to order of this Court.
- (ii) The Tahsildar of Katpadi Taluk is directed to provide necessary Surveyor to the Court Commissioner on request by the Court Commissioner without any delay to carry out this Commission.
- (iii) The Court Commissioner is directed to issue advance request letter to the Tahsildar, Katpadi Taluk by enclosing a copy of this Order and Warrant which enable them to depute a Suitable Surveyor to carry out the Warrant.
- (iv) The Court Commissioner's initial remuneration is fixed Rs.7,000/- (Rupees Seven Thousand Only) and the same shall be deposited by the Petitioner/Plaintiff within a Week in this Court.
- (v) The Office is directed to prepare Commission Warrant after the deposit is made by the Petitioner, and issue to the Court Commissioner.
- (vi) If any law and order problem may arise, the Court Commissioner may address a Letter to the Jurisdiction Police for want of Police protection and the Police has to extent their support without any deviation to the Court Commissioner.

(vii) In any event either the Police or the Revenue Department failed to extent their co-operation to the Court Commissioner and on report or memo by the Court Commissioner or Counsel, as the case may be, it will be viewed seriously and they are responsible for further contempt of Court on affidavit received from the Court Commissioner.

(viii) The time to file a Report with Plan is 45 days from the date of receipt of the Warrant by the Court Commissioner.

(ix) After filing of Report and Plan, then only, the Court Commissioner is entitled his remuneration on filing necessary memo from this Court.

(x) The Court Commissioner is directed to file a Report and Plan on 05.06.2025.

-//This Order is directly typed by me in my Laptop, corrected and pronounced by me in the Open Court, on this the 26th Day of March – 2025.//-

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI

Both side documents and witnesses: Nil

(Sd/-)..K.Venkatesan
DISTRICT MUNSIF
KATPADI