

**IN THE COURT OF DISTRICT MUNSIF, KATPADI, VELLORE DISTRICT  
PRESENT: THIRU. K.VENKATESAN, B.A.,B.L.,  
DISTRICT MUNSIF, KATPADI.**

Monday, this the 01<sup>st</sup> Day of April – 2024

**I.A.No. 04 of 2023  
In  
O.S.No. 62 of 2023  
(CNR.No.TNVL23-000107-2023)**

1. C.Vasantha
2. C.Geetha
3. C.Elangovan
4. C.Suseela
5. C.Amutha
6. C.Thamizhselvi

.....Petitioners/Plaintiffs

**-Vs-**

1. K.Kanthammal
2. C.Boopalan
3. B.Chinnaponnu
4. Ramesh Babu
5. The Sub-Registrar, Katpadi

.....Respondents/Defendants

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. P.G.Balaji, the Counsel for Petitioners, and Thirumathi. G.Latha, the Counsel for the 1<sup>st</sup> Respondent, and Thiru. P.Rajendran, the Counsel for the Respondents-2 & 3, and Thiru. S.Dhayanithi, the Counsel for 4<sup>th</sup> Respondent, and the 5<sup>th</sup>

Respondent was set ex-parte in the main Suit, and upon perusing the petition, counter and the case records, and having stood for consideration till this date, this Court delivers the following:-

### **ORDER**

This petition has been filed by the Petitioners/Plaintiffs under Order 26 Rule 9 and Section 151 of Code of Civil Procedure, seeking to appoint an Advocate Commissioner to inspect the petition Schedule mentioned properties, and to note down the physical feature with the help of competent Surveyor, and to file his report with plan.

1. **Brief averments of the affidavit filed by the 1<sup>st</sup> petitioner is as follows:-**

1.1 The 1<sup>st</sup> petitioner is the 1<sup>st</sup> plaintiff in the above Suit, and she filed the affidavit on behalf of the other petitioners also, and states that the petition mentioned 'A' Schedule property originally belonged to one Kulandhaikan, S/o. Muthan, resided in Erukampattu Village in Katpadi Taluk, Vellore District, and the he had purchased the same from one Virubatchi Iyer, S/o. Munusamy Iyer, under the Registered Sale Deed dated 11.03.1938, and got delivery of the same on the date itself, and from the date of purchase, he had been in possession and enjoyment of the same as an absolute owner.

1.2 While so, the said Kulandhaikan died on 06.04.1943 leaving behind his son namely Chokkalingam and daughter namely Kanthammal as his legal heirs, and at the time of death of the said Kulandhaikan, his legal heirs were minors and they were under the control of their maternal uncle namely Irusan, who acted as Natural Guardian for

them, and after attaining majority in the year 1960, the legal heirs of the said Kulanthaikan had been in possession and enjoyment of the petition mentioned 'A' Schedule property as absolute owners, and they got their father's property from their maternal uncle in the year 1960.

1.3 After attaining majority, the said Chokkalingam took care of his sister Kanthammal, and he has spent huge amount also for the marriage of her sister namely Kanthammal which was held in the year 1967. As the said Chokkalingam conducted marriage of his sister, so the said Kanthammal relinquished her share in favour of her brother Chokkalingam at the time of oral Partition held between them in the year of 1972, and thus, from the said year, the said Chokkalingam had been in possession and enjoyment of the petition 'A' Schedule mentioned property as an absolute owner.

1.4 Thereafter, the said Chokkalingam sold 0.8 cents to one Irusan dated 13.07.1978. Then, the said Chokkalingam also died on 27.07.2005, and the petitioners-1 to 6, and the 2<sup>nd</sup> respondent are the legal heirs of his estate, and they inherited the petition 'A' Schedule property and they had been in possession and enjoyment of the same. In the mean time, the petitioners-2 to 6 and the 2<sup>nd</sup> respondent had decided to execute a Relinquish Deed with regard to the property of the said deceased Chokkalingam in their family in the month of September 2017.

1.5 Afterwards, the petitioners-2 to 6 had executed a Registered Relinquish Deed on 24.06.2019 with regard to the petition 'A' Schedule property, and for the said

execution of Deed, the 2<sup>nd</sup> respondent had given his consent orally. Hence, as per the said Registered Relinquish Deed dated 24.06.2019, the 1<sup>st</sup> petitioner had become the absolute owner of the petition 'A' Schedule property and from 24.06.2019 onwards, she had been in possession and enjoyment of the same as absolute owner.

1.6 Under these circumstances, the 1<sup>st</sup> petitioner had decided to settle out the petition 'A' Schedule property in favour her sons and daughters, and accordingly, she has executed a Registered Settlement Deed dated 01.11.2019 and thus, she settled some portion of the petition 'A' Schedule property in favour of the 2<sup>nd</sup> petitioner – C.Geetha which is morefully described as 'B' Schedule property, and in favour of the 3<sup>rd</sup> petitioner – C.Elangovan which is morefully described as 'C' Schedule property, and in favour of the 4<sup>th</sup> petitioner – C.Suseela which is morefully described as 'D' Schedule property, and in favour of the 5<sup>th</sup> petitioner – C.Amutha which is morefully described as 'E' Schedule property, and in favour of the 6<sup>th</sup> petitioner – C.Tamilselvi which is morefully described as 'F' Schedule property in the petition, and the properties described in the petition 'B' to 'F' Schedule properties are the part and parcel of the petition 'A' Schedule property.

1.7 While so, the 1<sup>st</sup> respondent without any right and title over the petition Schedule property on the inducement of the 2<sup>nd</sup> respondent, had included her name in the Joint Patta for the petition Schedule properties, and the Revenue Official have also aided to their unlawful activities. Except of including the 1<sup>st</sup> respondent name in the new Patta, she never enjoyed the petition property. As the rift arose between the 1<sup>st</sup> petitioner and

her son the 2<sup>nd</sup> respondent, in order to grab the properties, and also to cause embarrassment, the 1<sup>st</sup> respondent on 03.02.2021, has made a Sale Deed with regard to the petition Schedule property in the name of the 3<sup>rd</sup> respondent who is the wife of 2<sup>nd</sup> respondent, and again, she executed a Rectification Deed in favour of the 3<sup>rd</sup> respondent dated 26.02.2021, and as the said Kanthammal has no right, title over the petition Schedule properties, and the said Sale Deed dated 03.02.2021 and the Rectification Deed dated 26.02.2021 has become Null and Void, and the 5<sup>th</sup> respondent had no locus standi to register the same on his office.

1.8 Further, the said 3<sup>rd</sup> respondent, in order to cheat and grab the property, sold out the same to the 4<sup>th</sup> respondent on 22.03.2022 through the 5<sup>th</sup> respondent office. As the 3<sup>rd</sup> respondent has no right and title over the petition Schedule property, and the Sale Deed made by her dated 22.03.2022 has become Null and Void. The 1<sup>st</sup> petitioner has submitted several representations to the concerned officials with regard to the unlawful activities of the respondents, but as the 2<sup>nd</sup> respondent is working as a Government Staff has been influencing all those officials concerned and hence, the 1<sup>st</sup> petitioner lodged her objections to the authorities on 18.02.2022.

1.9 The 1<sup>st</sup> petitioner further states that pending the above Suit, the respondents voluntarily putting up construction in a portion of the petition Schedule properties, and the petitioners try to resist the same but all are in vein, and the construction is going on day to day, and the act of the respondents are highly illegal and unlawful, and it has no

force at all in the eye of law. Due to the reasons, the petitioners have come forward with this petition to appoint an Advocate Commissioner to inspect the petition Schedule mentioned properties, and to note down the physical feature with the help of competent Surveyor, and to file his report with plan, and that it will minimize the evidence of both parties, and this Court will come to the conclusion of this case, and no pre-judice will be caused to the other side, and prayed to allowed the petition.

2. **Brief averments of the counter filed by the 4<sup>th</sup> respondent is as follows:-**

**(Adopted by the Respondents-1 to 3)**

2.1 The petition is not sustainable either in law or on facts of the case, and the respondent denies all the allegations made in the affidavit and puts the petitioners to strict proof of the same, and states that the property in Katpadi Taluk, Erukambattu Village comprised in S.No.166 was originally belonged to Kuzhandaikan, S/o. Muthaandu, and he having purchased the same from Virubakshaiya, S/o. Munisamy Ayya, under the Registered Sale Deed dated 11.03.1938 vide in Doc.No.900/1938.

2.2 After the said Kuzhandaikan died intestate, leaving behind his daughter Kanthammal (the 1<sup>st</sup> respondent herein), and son Chokkalingam as his legal heirs to succeed his estate. Suppressing the real facts, and without giving any share to his Sister Kanthammal, the said deceased Chokkalingam had obtained Patta in his name alone, and thus, the 1<sup>st</sup> respondent had given the petition to the Tahsildar, Katpadi to include her name in the said property in S.No.166/1A1.

2.3 That the Tahsildar, Katpadi obtained the statements from the 1<sup>st</sup> respondent, the petitioners and the Zonal Deputy Tahsildar, Katpadi, had passed an order dated 19.12.2020 to include the 1<sup>st</sup> respondent name Kanthammal in Patta No.592. Thereafter, the 1<sup>st</sup> respondent Kanthammal was in possession and enjoyment of the said property, and she sold her share of property in S.No.166/1A1 extent of 0.12.5 Hectares in the Common Half Share i.e., 15 ½ cents for valid and binding consideration in favour of the 3<sup>rd</sup> respondent namely Chinnaponnu under the Registered Sale Deed dated 03.02.2021 vide in Doc.No.1057/2021.

2.4 Thereafter, the 3<sup>rd</sup> respondent's name included the Patta in Patta No.592, and she was in possession and enjoyment of the said property. Subsequently, the 3<sup>rd</sup> respondent sold the property in favour of the 4<sup>th</sup> respondent for valid and binding consideration under the Registered Sale Deed dated 22.03.2022 vide in Doc.No.2809/2022.

2.5 After the said purchase, the said property in S.No.166/1A1 was sub-divided as New S.No.166/1A1A extent 0-6.25 Hectares, and Patta was also issued in favour of 4<sup>th</sup> respondent, and his Patta No.777, and he is in possession and enjoyment of the same, and also constructed RCC roofed residential building in the said property, and he had deposited the Meter Caution Deposit Amount and others to the TANGEDCO and obtained Temporary Electric Service Connection in S.C.No.200082100623185 in his name.

2.6 Further, the 4<sup>th</sup> respondent states that the petitioners-2 to 7 have no right to executed the Registered Release Deed dated 24.06.2019 in favour of the 1<sup>st</sup> petitioner and the 1<sup>st</sup> petitioner also have no right to execute the Registered Settlement Deed dated 01.11.2019 in favour of the petitioners-2 to 7, because the 1<sup>st</sup> respondent gave the petition to the Tahsildar, Katpadi on 29.05.2019, and pending for enquiry before the Tahsildar, Katpadi, and the petitioners have knowledge about the enquiry, but they wantonly created the Registered Release Deed dated 24.06.2019, and Settlement Deed dated 01.11.2019, and the said deeds are not binding on the respondents.

2.7 The petitioners have suppressed the real material facts and filed the above petition vexatiously only to gain wrongfully and to harass the 4<sup>th</sup> respondent, and the petitioners had wantonly filed the above Suit against the respondents for spoiling their reputation in the society, and the petitioners are not entitled for appointment of Advocate Commissioner, because the 4<sup>th</sup> respondent's property is the Separate property in S.No.166/1A1A, and the S.No. mentioned properties are also not correct, and before filing of the Suit, the S.No.166/1A was sub-divided as New Sub-Division S.No.166/1A1A and S.No.166/1A1B, and the petitioner having knowledge of the said Sub-division, suppressed the real and material facts, and the petitioners wantonly filed the above Suit in old S.No.166/1A, and the petitioners have not come to this Court with clean hands, and prayed to dismiss the petition with exemplary costs of him.

3. Neither the petitioners nor the respondents have placed any oral or documentary evidence before this Court.

4. **Point for Consideration:-**

a) Whether this petition is to be allowed or not?

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

Both sides has been heard. Records Perused. Upon careful analysis of the records, it is found that the petitioners have filed this petition with a plea for appointment of an Advocate Commissioner to inspect the petition Schedule mentioned properties, and to note down the physical feature with the help of competent Surveyor, and to file his report with plan.

5.1 The provisions of Order 26 Rule 9 of the CPC are 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.”

5.2 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. Further, 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.

5.3 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. 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.

6. It is seen from records that the present petitioners are the plaintiffs in the Suit, and they have filed the above Suit for the relief of declaring the 2<sup>nd</sup> to 6<sup>th</sup> – Plaintiffs are the absolute owners of the Suit ‘B’ to ‘F’ Schedule mentioned properties, and for consequential permanent injunction as against the defendants, and also for declaration of the Registered Sale Deed dated 03.02.2021 executed by the 1<sup>st</sup> defendant & the Registered Rectification Deed dated 26.02.2021 executed by the 1<sup>st</sup> defendant and the Registered Sale Deed dated 22.03.2022 executed by the 3<sup>rd</sup> defendant, are as Null and Void, and for costs.

7. After appearance of defendants on receipt of Summons, the defendants-1, 3 & 4 have filed their Written Statement on 15.09.2023, and the 3<sup>rd</sup> defendant has adopted the written statement filed by the defendants-1, 3 & 4. Before filing of the written statements, the plaintiffs have filed the present petition to appoint an Advocate Commissioner, and as on date, issues were not framed.

8. In affidavit, the petitioners/plaintiffs have stated that pending the above Suit, the respondents voluntarily putting up construction in a portion of the petition Schedule properties, and the construction is going on day to day, and the act of the respondents are highly illegal and unlawful, and thus, the petitioners have come forwarded with this petition to appoint an Advocate Commissioner to inspect the petition Schedule mentioned properties, and to note down the physical feature with the help of competent Surveyor, and to file his report with plan, and that it will minimize the

evidence of both parties, and this Court will come to the conclusion of this case, and no pre-judice will be caused to the other side, and prayed to allowed the petition.

9. On contra, in Counter, the 4<sup>th</sup> respondent/defendant has stated that he had purchased the property of 1<sup>st</sup> respondent – Kanthammal in S.No.166/1A1 extent of 0.12.5 Hectares in the Common Half Share i.e., 15½ cents, from the 3<sup>rd</sup> respondent – Chinnaponnu under the Registered Sale Deed dated 22.03.2022 vide in Doc.No.2809/2022 for valid and binding consideration, and after that, the said property in S.No.166/1A1 was sub-divided as New S.No.166/1A1A extent 0-6.25 Hectares, and the Patta was also issued in his favour in Patta No.777, and he is in possession and enjoyment of the same, and also constructed RCC roofed residential building in the said property, and he had deposited the Meter Caution Deposit Amount and others to the TANGEDCO and obtained Temporary Electric Service Connection in S.C.No.200082100623185 in his name, and his property is the Separate property in S.No.166/1A1A, and the S.No. mentioned properties are also not correct, and before filing of the Suit, the S.No.166/1A was sub-divided as New Sub-Division S.No.166/1A1A and S.No.166/1A1B, and the petitioners are having knowledge of the said Sub-division, suppressed the real and material facts, and the petitioners wantonly filed the above Suit in old S.No.166/1A, and the petitioners have not come to this Court with clean hands, and prayed to dismiss the petition with exemplary costs of him.

10. From the above averments & the pleading, it is very clear that the properties described in the petition 'B' to 'F' Schedule properties are the part and parcel of the petition 'A' Schedule property, and the Suit itself is filed by the plaintiffs for the relief of Declaration that to declare the 2<sup>nd</sup> to 6<sup>th</sup> – Plaintiffs are the absolute owners of the Suit 'B' to 'F' Schedule mentioned properties, and for consequential permanent injunction as against the defendants, and also for declaration of the Registered Sale Deed dated 03.02.2021 executed by the 1<sup>st</sup> defendant & the Registered Rectification Deed dated 26.02.2021 executed by the 1<sup>st</sup> defendant and the Registered Sale Deed dated 22.03.2022 executed by the 3<sup>rd</sup> defendant, are as Null and Void, and for costs.

11. According to the plaintiffs that the 1<sup>st</sup> defendant had relinquished her Share in favour of her brother Chokkalingam by way of Oral Partition held in the year 1972 itself, and thus, the said Chokkalingam was in possession and enjoyment of the 'A' Schedule property as an absolute owner, and the plaintiffs have inherited the 'A' Schedule property as they are the legal heirs of the said deceased Chokkalingam, and as per the Registered Family Partition Deed dated 24.06.2019, the 1<sup>st</sup> plaintiff had become the absolute owner of petition 'A' Schedule property, and she had settled out the said petition 'A' Schedule property to the plaintiffs-2 to 6 through a Registered Settlement Deed dated 01.11.2019.

12. But, the defendants have stated that the 1<sup>st</sup> defendant gave the petition to the Tahsildar, Katpadi on 29.05.2019, and pending for enquiry before the Tahsildar, Katpadi,

and the petitioners have knowledge about the enquiry, but they wantonly created the Registered Release Deed dated 24.06.2019, and Settlement Deed dated 01.11.2019, and the said deeds are not binding on the respondents, and after the said Kuzhandaikan died intestate, leaving behind his daughter Kanthammal (the 1<sup>st</sup> defendant), and son Chokkalingam as his legal heirs to succeed his estate. By suppressing the real facts, and without giving any share to his Sister Kanthammal, the said deceased Chokkalingam had obtained Patta in his name alone, and thus, the 1<sup>st</sup> defendant had given the petition to the Tahsildar, Katpadi to include her name in the said property in S.No.166/1A1, and after due enquiry, the Tahsildar, Katpadi, had passed an order dated 19.12.2020 to include the 1<sup>st</sup> defendant name Kanthammal in Patta No.592. Thereafter, the 1<sup>st</sup> defendant Kanthammal was in possession and enjoyment of the said property, and she sold her share of property in S.No.166/1A1 extent of 0.12.5 Hectares in the Common Half Share i.e., 15 ½ cents for valid and binding consideration in favour of the 3<sup>rd</sup> respondent namely Chinnaponnu under the Registered Sale Deed dated 03.02.2021 vide in Doc.No.1057/2021, and in turn, she sold the same to the 4<sup>th</sup> defendant, and he claims that he is in possession and enjoyment of the same and also constructed RCC roofed residential building of the said property, and obtained EB Connection in his name.

13. Upon careful consideration of the entire case records that the Suit has been filed by the petitioners/plaintiffs for declaration to declare the 2<sup>nd</sup> to 6<sup>th</sup> – Plaintiffs are the absolute owners of the Suit ‘B’ to ‘F’ Schedule mentioned properties, and for

consequential permanent injunction as against the defendants, and also for declaration of the Registered Sale Deed dated 03.02.2021 executed by the 1<sup>st</sup> defendant & the Registered Rectification Deed dated 26.02.2021 executed by the 1<sup>st</sup> defendant and the Registered Sale Deed dated 22.03.2022 executed by the 3<sup>rd</sup> defendant, are as Null and Void.

14. In the present case, this Court has to give a finding that whether the plaintiffs are to be declare as the absolute owner of the 'B' to 'F' of the Suit properties or not? is the main issue, and for that, this Court bound to considers the evidence adduce by both the parties, and at this scenario, this Court does not require any clarification with regard to the said issue by way of appointing an Advocate Commissioner and no need to measure the Suit properties.

15. Further, it is seen from plaint Schedule 'A' to 'F' of Suit properties are in respect of S.No.166/1A1, and as per the plaint averments & the plaintiffs' Settlement Deed dated 01.11.2019, the Suit 'A' Schedule property was divided in to 'B' to 'F' Schedule of properties, and the 'B' to 'F' Schedule portion of properties were settled to the plaintiffs-2 to 6 respectively, and they have been in possession and enjoyment of the same, and thereby, the plaintiffs have filed the Suit for declaration and for consequential relief.

16. It is pertinent to note that in the present petition affidavit, the petitioners have stated that the respondents voluntarily putting up construction in a portion of the

petition Schedule properties, and the construction is going on day to day, but the petitioners have not specifically to describe or whisper any thing with regard to the alleged construction of the respondents is made in which portion of plaint Schedule properties i.e., the 'B' to 'F' Schedule mentioned properties.

17. Further, if the defendants have started the alleged construction in the Suit properties in during the pendency of the Suit is being true, the plaintiffs ought have to seek for recovery of possession from the defendants by way of filing petition to amend the plaint. Instead of doing so, and without proving their title over the Suit properties in this case, the petitioners/plaintiffs herein have filed this petition to inspect the petition Schedule mentioned properties by an Advocate Commissioner, and to note down the physical features with the help of competent Surveyor and to file his report with plan.

18. In respect of possession is concerned, this Court is of the considered view that since the permanent injunction prayer is mere a consequential to the main issues, and the same could be decided based on the main relief. Further, an Advocate Commissioner cannot be appointed to gather evidence on their behalf. Hence, the prayer for appointment of an Advocate Commissioner to note down the physical features of the Suit properties with the help of competent Surveyor, cannot be entertained.

19. In view of all these facts of the case, this Court is not inclined to allow this petition. Accordingly, the point is answered against the petitioners.

20. **Result:-**

In fine, in the interest of justice, this petition is dismissed. No costs.

-//Dictated by me to the Steno-typist, who directly typed the same, corrected and pronounced by me in the Open Court, on this the 01<sup>st</sup> Day of April – 2024.//-

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

**Both side documents and witnesses: Nil**

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