

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

Thursday, this the 24th Day of August – 2023

I.A.No. 2 of 2022
In
I.A.No. 477 of 2018
In
O.S.No. 105 of 2016
(CNR.No.TNVL23-000153-2016)

Vijayan

.....Petitioner/Plaintiff

-Vs-

1. Devendiran
2. Venkatesan
3. Sarasa

.....Respondents/Defendants

This petition has come up today before this Court for orders, upon hearing the arguments of Thiru. S.Gunasekaran and G.Vijayabaskar, the Counsels for the Petitioner/Plaintiff, and even after providing sufficient opportunities, the Respondents/Defendants-1 to 3, have failed to file Counter and they were set ex-parte, and upon perusing the petition 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 Section 151 of Civil Procedure Code to order for the help of Assistant Director of Survey, Vellore District to help the Advocate Commissioner to measure the suit property, and to file a report with plan.

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

The petitioner is the plaintiff in the above suit, and stated that the Advocate Commissioner has filed a memo stating that as there are no survey stones are available, she

wants the help of District Surveyor's help to complete her work entrusted by Warrant, and this Court ordered for steps in this regard, and therefore, the petitioner has been filed this petition and prayed to allow the same and further the petitioner stated that no pre-judice will cause to the respondents.

2. Notice served on the Respondents-1 to 3 Counsel. Even after providing sufficient opportunities, the Respondents-1 to 3 have failed to file counter and they were set ex-parte.

3. Neither the petitioner nor the respondents have placed any oral or documentary evidence before this court.

4. **Points for Consideration:-**

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

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

Heard. Records perused. Upon careful analysis, it is found that the petitioner is the plaintiff in the above suit which was filed against the defendants-1 to 3 (who are the respondents-1 to 3 herein) for the relief of permanent injunction restraining the defendants, their servants, agents and men from creating problems regarding the construction made by the plaintiff in the suit property, and for costs.

6. On careful perusal of records, the defendants-1 to 3 have filed written statement on 28.02.2018 and issues were framed on 19.02.2019. When the case was posed for trial, the petitioner/plaintiff has filed application to appoint an Advocate commissioner to measure the suit property and the same was already allowed in I.A.No.477/2018 on 30.04.2021, and an Advocate Ms. Jamuna has been appointed as Advocate commissioner.

7. On 16.03.2022, the said Advocate Commissioner has filed a memo before this Court stating that she inspected the suit property on 26.02.2022 along with the assistance of VAO & Taluk Surveyor, and both the parties & their respective counsels were present. At the time of inspection, she could not able to trace the Survey Stone, and prayed time to re-inspect the suit property and adjourned the inspection on 26.03.2022.

8. Further, on 29.06.2022, the said Advocate commissioner has filed another memo before this Court stating that when she about to measure the suit property that there was in-difference in measurement due to non-availability of Survey Stones (4 No's) and she adjourned the inspection once again, and prayed to appoint the District Surveyor to help her to measure the suit property. Hence, the petitioner/plaintiff has come forward with this petition seeking to order for the help of Assistant Director of Survey, Vellore District to help the Advocate Commissioner to measure the suit property, and to file a report with plan.

9. From the above facts, it is very clear that the Advocate Commissioner is dire need of assistance to inspect the suit property and her inspection was not completed due to non-availability of the Survey Stones in respect of suit property. Since, the non availability of Survey Stones, the inspection was not completed, and the Advocate commissioner has filed memo's to that effect before this Court.

10. The purpose of appointment Advocate Commissioner by the Court was not fulfilled due to non availability of Survey Stones in suit property. Hence, this Court is of the view that the suit property has to be necessarily inspected by the Advocate Commissioner with the assistance of VAO & the above the rank of Taluk Surveyor. Therefore, the contention of the

petitioner is acceptable one and no pre-judice will be caused to respondents by allowing this petition. Accordingly, the point is answered in favour of the petitioner.

11. **Result:-**

From the above discussions, in the interest of justice, this petition is allowed and the Advocate Commissioner is directed to measure the suit property with the help of Assistant Director of Surveyor, Vellore District, and to file her report with plan. 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 24th Day of August – 2023.//-

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Both side documents and witnesses: - Nil

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