

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

Friday, this the 07th Day of February – 2025

**I.A.No. 3 of 2023
In
O.S.No. 139 of 2022
(CNR.No.TNVL23-0000185-2022)**

S.Devakkan

Rep.by his General Power of Attorney Agent S.Jothimary (Amended as per Order in
I.A.No. 4 of 2024 dated 30.09.2024)

.....Petitioner/Plaintiff

-Vs-

M.Dass

.....Respondent/Defendant

This petition has come up today before this Court for orders, and upon hearing the argument of Thiru. G.Seralathan, the Counsel for the Petitioner, and Thiru. C.Stalin, the Counsel for the Respondent, 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 of Code of Civil Procedure, seeking to appoint an Advocate Commissioner to inspect the Suit property of entire Plot No.33 as per the Plaintiff's Registered Sale Deed dated

03.06.2013, in Doc.No.5095/2013, and as per the Defendant's Registered Sale Deed dated 05.02.1994, in Doc.No.308/1994, and to note down the physical feature of the same with the help of Taluk Surveyor, and to measure total Plot No.33, and entire 'A' Schedule and 'B' Schedule, and to specifically note the encroachment construction of Stair Case and closed ventilation of the Petitioner's building in the attach bedroom as detailed in the 'C' Schedule of property.

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

1.1 The Petitioner is the Plaintiff in the above Suit, and states that his sister have purchased the 'A' Schedule of property on 03.06.2013 from M.Gnanasekari, vide in Doc.No.5095/2013. At the time of purchase of the property, R.C.C. building and vacant site are situated to an extent of East to West 19 feet, North to South 66 feet, in total 1254 Sq.ft. Subsequently, she executed Registered Settlement Deed on 22.07.2015 in favour of her brother namely S.Devakkan (the Petitioner herein), S/o. N.Selvam, and he is unable to conduct or file case in the Court of Law by him. Hence, he executed General Power of Attorney in favour of his Sister Jothimary under Registered Document on 28.07.2022.

1.2 Further, the 'B' Schedule property was purchased by the Defendant on 05.02.1994, in Doc.No.308/1994 to an extent of East to West 21 feet, North to South 66 feet, in totally 1386 Sq.ft. He also purchased the said property with R.C.C Building and vacant site. All of sudden, Last Week of July 2022, the Respondent/Defendant

demolished his old Stair Case and constructed new Stair Case by encroaching ½ feet East to West, North to South 66 feet from which the Petitioner using ventilation and air from the said vacant site which is mentioned as 'C' Schedule of property in the above Suit.

1.3 The Respondent encroached and constructed on the Wall of the Petitioner's building ('A' Schedule of property) by putting holes on the Wall of the Petitioner's building, and closed the ventilation from which the Petitioner unable to get light and air for Bathroom and Bed room (attach bedroom) for which he have given complaint to the Superintendent of Police, the Collector of Vellore, and all of them advised both the parties to proceed in the Court of Law, since the matter is Civil in Nature.

1.4 Hence, the Petitioner issued Lawyer Notice on 17.08.2022, and the Respondent given Reply Notice dated 26.08.2022 with false and frivolous allegations. Hence, the Petitioner constrained to file the Suit for Mandatory Injunction to demolish the encroachment Construction of the Respondent as mentioned in the 'C' Schedule of property, and he also pray for Permanent Injunction restraining the Respondent from further Construction of encroachment in the 'A' Schedule of property, and for appointment of Advocate Commissioner to inspect the Suit property for the purpose of encroachment by the Respondent, even after filing of the above Suit and after receipt the Suit Summon by the Defendant, he continuously encroached and constructed in the 'C' Schedule mentioned property.

1.5 Unless, the Commissioner is appointed, the Petitioner will be put to serious loss and hardship. Therefore, the Petitioner prays to appoint an Advocate Commissioner to inspect the Suit property of entire Plot No.33 as per the Plaintiff's Registered Sale Deed dated 03.06.2013, in Doc.No.5095/2013, and as per the Defendant's Registered Sale Deed dated 05.02.1994, in Doc.No.308/1994, and to note down the physical feature of the same with the help of Taluk Surveyor, and to measure total Plot No.33, and entire 'A' Schedule and 'B' Schedule, and to specifically note the encroachment construction of Stair Case and closed ventilation of the Plaintiff's building in the attach Bedroom as detailed in the 'C' Schedule of property, and prayed to allow the petition.

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

2.1 The petition filed by the Petitioner is not at all maintainable either in law or on facts. The Respondent admits that the Petitioner is the Owner of the Suit property, and states that he is not aware of the alleged Settlement Deed and the Power of Attorney relied upon by the Petitioner/Plaintiff and he is no way connected to the said documents, and he is not party to the said documents, and the said documents are not connected with the property purchased and enjoyed by him.

2.2 Further, the Respondent admits that he purchased the property more fully described as 'B' Schedule property vide in Registered Sale Deed dated 05.02.1994, and he constructed a House, and enjoying his property without hindrance, and the property purchased by the Respondent/Defendant which is shown as 'B' Schedule property, and

the property purchased by the Petitioner/Plaintiff which is shown as a Schedule in the Plaintiff originally belonged to one Ethirajulu Chettiar, and his son Opul Chettiar, and they sold the same to one Munisamy Mesthiri by way of Registered Sale Deed dated 29.06.1966, and the said Munisamy enjoyed the same for more than 30 years and subsequently, the said Munisamy sold a portion of the said property i.e., in the said Plot No.33 measuring an extent of 1386 Sq.ft., with specific extent and boundary vide Registered Sale Deed dated 24.01.1992 to the Respondent/Defendant's Vendor V.R.Latha, and in turn the said V.R.Latha sold the said property by way of Registered Sale Deed dated 05.02.1994, and after selling the said property to the Respondent/Defendant, the said Munisamy executed a Settlement Deed in respect of the balance extent to his wife namely Gnanasekari with specific boundaries to an extent of 1254 Sq.ft. From the said Gnanasekari, the Petitioner/Plaintiff's Sister Jothimary purchased the property on 03.06.2013.

2.3 Further, the Respondent/Defendant states that he purchased the 'B' Schedule property situated in Kangayanellore Village S.No.347/1C with specific boundaries totaling an extent of 1386 Sq.ft., from his vendor one Tmt. V.R.Latha, W/o. P.L.Raja Chetty, by virtue of a Registered Sale Deed dated 05.02.1994, and the said Respondent/Defendant's vendor V.R.Latha, purchased the said property from one Munisamy Mesthiri, S/o. Ellappan by virtue of Registered Sale Deed dated 24.01.1992 with specific boundaries measuring the total extent of 1386 Sq.ft., only.

2.4 Further, the Respondent/Defendant constructed a house about 25 years back, and he is enjoying his property without any hindrance from the date of his purchase, and he obtained Electricity Service Connection in his name, and also paying House Taxed to the Vellore Municipal Corporation. After the purchase of the property, that in the year 1996 itself, for the purpose of construction the house, when the Respondent/Defendant measured his property with the help of Surveyor Revenue Officials, the Respondent and the said Munisamy came to know that there exist 1 feet breadth excess in the said Plot between the Suit 'A' and 'B' Schedule property i.e., the Respondent/Defendant's property, and the said Gnanasekari's site.

2.5 So, in order to avoid future disputes, the Respondent and the said Gnanasekari entered in to an agreement on 06.01.1996 thereby agreeing to Share the 1 feet breadth Space situated between their both the Plots, and accordingly, it is agreed by both parties that the Gnanasekari has to enjoy 4 inches up to 52 feet length from the Street, and he balance 8 inches to an extent of 52 feet length in the remaining area has to be enjoyed by the Respondent/Defendant. Thus the excess 1 feet breadth was shared by the Respondent/Defendant and the said Gnanasekari from the year 1996 onwards.

2.6 In total, the Respondent/Defendant has got 48 Sq.ft., excess. But, he had constructed his house only within the area i.e., Specific boundaries and measurements as per the Sale Deed, and constructed the Stair Case within the said area only, and left the said 8 inches without constructing any kind of building. From the above said

Gnanasekari, the Petitioner/Plaintiff's Sister Jothimary purchased the property in the year 2013, and subsequently, she settled the said property to the Petitioner/Plaintiff in the year 2015. But the Respondent/Defendant has constructed the house in his property even in the year 1996 itself, and enjoying the same without any hindrance for the past 25 years.

2.7 The Petitioner/Plaintiff's Sister Jothimary purchased the adjacent said property on 03.06.2013 from the said Gnanasekari measuring an extent of 1254 Sq.ft., and she executed a Settlement Deed on 22.07.2015 in favour of her brother S.Devakkan (the Petitioner/Plaintiff herein). Subsequently, it seems that the said Petitioner executed a General Power of Attorney in the name of his Sister Jothimary on 28.07.2022 to look and manage the property, and the Respondent/Defendant came to know about the said facts from the Encumbrance Certificate obtained by him in respect of S.No.347/1C.

2.8 In fact, the Petitioner/Plaintiff completed his construction recently and raised the Wall over the Septic Tank to an excess of 6 Inches towards the property which had not at all objected the same. The excess Space which has been mentioned as 'C' Schedule is only for Common Use, and the Respondent/Defendant was given access and permission to enjoy 8 Inches in the said excess Space. But, the Respondent/Defendant had completed his construction only within the Space earmarked as per his Sale Deed measurements and not at all used the excess 8 Inches, and the same is left for Air and Ventilation purpose.

2.9 Such being the facts, by suppressing all the above facts, the Petitioner/Plaintiff unnecessarily started creating problems with the Respondent/Defendant by claiming that the construction of the Stair Case is obstructing his Ventilation and Sunlight. The Respondent/Defendant had explained the Petitioner/Plaintiff that he had made constructions well within the property covered in the Sale Deed. But, in order to harass the Respondent/Defendant, the Petitioner/Plaintiff had lodged a Police Complaint before Viruthampet Police Station and the Sub-Inspector of Police, Viruthampet Police Station visited the Suit 'A' and 'B' Schedule property on 20.07.2022, and upon visiting the Schedule, the Sub-Inspector of Police came to know that the Petitioner/Plaintiff had lodged a false Complaint and hence, he advised the Petitioner/Plaintiff accordingly not to disturb the Respondent/Defendant.

2.10 In spite of warning given by Police Officials, even though the Petitioner/Plaintiff completed his entire construction, that is on 17.08.2022, the Petitioner/Plaintiff had caused a Legal Notice with vexatious averments as if the Respondent/Defendant is trying to encroach the $\frac{1}{2}$ feet in the Petitioner/Plaintiff's property. Since, the Petitioner/Plaintiff has finished his construction also, the Petitioner/Plaintiff is not having any vacant Space on the Eastern side of the property as alleged in the Notice.

2.11 The Respondent/Defendant had not intended to encroach the Petitioner/Plaintiff's property, and hence, there is no necessity for the

Respondent/Defendant to demolish the Stair Case which is constructed within his property and the Petitioner/Plaintiff has no right to question the construction made by the Respondent/Defendant in his own property. Therefore, the Respondent/Defendant had issued a suitable reply on 26.08.2022 to the Petitioner/Plaintiff's Counsel.

2.12 In order to further harass the Respondent/Defendant, the Petitioner/Plaintiff lodged a false Complaint before the Superintendent of Police, Vellore and also accordingly, that on 13.09.2022 and the Petitioner/Plaintiff and the Respondent/Defendant were called for enquiry also. The Police Officials after scrutinizing the title documents and other facts came to know that the Petitioner/Plaintiff had completed his construction and the Defendant is making repairs in the Stair Case well within his property, and the Police warned the Petitioner/Plaintiff not to make any false Complaints. Further, the Police had also obtained in writing from both the Petitioner/Plaintiff and the Respondent/Defendant to resolve the issue through Court of Law.

2.13 In spite of giving suitable reply, in order to further threaten and harass the Respondent/Defendant, the Petitioner/Plaintiff had filed this Suit seeking Mandatory Injunction to demolish the Stair Case which is constructed by the Respondent/Defendant in his property, and also for Permanent Injunction not to make any further construction in the property of the Petitioner/Plaintiff. In fact, the Respondent/Defendant is construction his Stair Case within his property and not at all encroached even a single

Sq.ft from the Petitioner/Plaintiff's property. Hence, the Petitioner/Plaintiff cannot seek Mandatory Injunction to demolish the Stair Case of the Respondent/Defendant which is constructed within his property and also not entitled for the relief of Permanent Injunction.

2.14 The Petitioner/Plaintiff knowing very well that she is entitled for 4 Inches in the excess 1 Sq.ft., and the Respondent/Defendant is entitled for excess 8 Inches. In order to obstruct the said usage of the 8 Inches which was permitted by the Respondent/Defendant's Vendor Gnanasekari, the Petitioner/Plaintiff cunningly filed the vexatious Suit and trying to create further confusions. Further, in the above said Plaint, the Petitioner/Plaintiff has stated that as the Respondent/Defendant has encroached $\frac{1}{2}$ Sq.ft., of the Petitioner/Plaintiff's property. In fact, the Petitioner/Plaintiff alone encroached and raised Wall beyond his property to an extent of 6 Inches, and the Wall of the Petitioner/Plaintiff is raised above the Septic Tank of the Respondent/Defendant. But, the Petitioner/Plaintiff wantonly filed the Suit leveling false allegations and also filed this application for seeking Advocate Commissioner Report by giving false measurements.

2.15 After receipt of Court Summons, when the Respondent/Defendant is trying to take steps for measuring the Suit 'A', 'B' & 'C' Schedule properties with the Revenue Officials, that is on 09.10.2022, the Petitioner/Plaintiff taken law in his hand, and along with his henchmen tried to damage the Stair Case of the property which is very well

situated within the Suit 'A' Schedule property. When the same was questioned by the Respondent/Defendant and his family members, the Petitioner/Plaintiff has claimed that he had filed a case, and obtained Injunction. Hence, the Respondent/Defendant tried to give a Police Complaint, they had refused to take another Complaint from the Respondent/Defendant stating that the matter is civil dispute in nature.

2.16 The Petitioner/Plaintiff by suppressing the existence of 1 feet excess breadth and 66 feet length between the Suit 'A' and 'B' Schedule property, he wantonly obstructing the said 1 feet usage also. Since, the Petitioner/Plaintiff is continuously trying to demolish the Stair Case and trying to obstruct the usage of the Suit 'C' Schedule property, in order to prevent the illegal activities of the Petitioner/Plaintiff, the Respondent/Defendant had filed a Suit for Declaration of Easementary Rights of the Suit 'C' Schedule property, and for Permanent Injunction over the Suit 'A' and 'B' Schedule property, and the same is numbered before this Court, and pending before this Court.

2.17 The Commission petition has been belatedly filed only to drag on the proceedings. No useful purpose would be served by appointing a Commissioner in the present Suit, and the Petitioner/Plaintiff has no locus standi to file this petition, and the same is devoid of merits, and prayed to dismiss the petition.

3. Neither the Petitioner nor the Respondent had placed any oral or documentary evidence before this Court.

4. **Points for Consideration:-**

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

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

Both sides has been heard. Records perused. Upon careful analysis of the entire case records including the petition, counter and considering the arguments advance by the both sides, it is found that the Suit has been filed by the Plaintiff (the Petitioner herein) as against the Defendant (the Respondent herein) for a relief of Mandatory Injunction directing the Defendant to demolish the encroachment construction on the Suit 'A' Schedule of property which is detailed in the Suit 'C' Schedule of property, and for Permanent Injunction restraining the Defendant and his servants, agents, subordinate, men, etc., from in any manner encroaching and made further construction on the Suit 'A' Schedule of property, and for costs.

6. The Petitioner/Plaintiff has filed this petition with a plea for appointment of an Advocate Commissioner to inspect the entire Plot No.33 as per the Plaintiff's Registered Sale Deed dated 03.06.2013 in Doc.No.5095/2013, and as per the Defendant's Registered Sale Deed dated 05.02.1994 in Doc.No.308/1994, and to note down the physical feature of the same with the help of Taluk Surveyor, and to measure total Plot No.33, and entire Suit 'A' and 'B' Schedule property, and specifically note the encroachment construction of Stair Case and closed Ventilation of the Plaintiff's building in the attach Bedroom as detailed in the Suit 'C' Schedule of property.

7. It reveals from the records that the Petitioner is the Plaintiff in the above Suit, and he filed the Suit for the relief of Mandatory Injunction directing directing the Defendant to demolish the encroachment construction on the Suit 'A' Schedule of property which is detailed in the Suit 'C' Schedule of property, and for Permanent Injunction restraining the Defendant and his servants, agents, subordinate, men, etc., from in any manner encroaching and made further construction on the Suit 'A' Schedule of property, and for costs.

8. According to the Petitioner, he is the absolute owner of the Suit 'A' Schedule property in Survey No.347/1C with specific boundaries, and the Suit 'C' Schedule property is part of Suit 'A' Schedule property. The Petitioner alleged that the Respondent/Defendant has encroached $\frac{1}{2}$ feet of the Petitioner's Suit 'A' Schedule property, and constructed Stair Case is obstructing his Bedroom ventilation and Sun Light, which is described as Suit 'C' Schedule property. Hence, he filed this Suit for the relief of Mandatory Injunction to demolish the encroachment construction on the Suit 'A' Schedule property which is detailed in the 'C' Schedule property, and also for Permanent Injunction restraining the Defendant from in any manner encroaching and made further construction on the Suit 'A' Schedule property.

9. It is not disputed by the Defendant/Respondent herein either in the Written Statement & in the Counter filed by him in this petition that the Petitioner/Plaintiff is the owner of the Suit 'A' Schedule property, and he purchased the Suit 'B' Schedule

property with specific boundaries totaling to an extent of 1386 Sq.ft., a portion of Plot No.33, and he stated that after measuring his property, he came to know that there exists 1 feet breadth excess in the said Plot between the Suit 'A' and 'B' Schedule property, and it was Shared between him and the Plaintiff's Sister vendor Gnanasekari, W/o. Munisamy by entering into an agreement on 06.01.1996, thereby agreeing to share 4 Inches upto 52 feet length from the Street by the said Gnanasekari, and the remaining 8 Inches to an extent of 52 feet length has to be enjoyed by him, and thus the excess 1 feet breadth was Shared by them, and he has got 48 Sq.ft., excess, but he had constructed his house only within the area as per Sale Deed, and constructed the Stair Case within the said area only and left the said 8 Inches without constructing any kind of building.

10. Further, the Defendant stated that the excess Space which has been mentioned as Suit 'C' Schedule property is only for common use and he was given access and permission to enjoy 8 Inches in the said excess Space, and he completed his construction only within the space earmarked as per his Sale Deed measurements, and not at all used the excess 8 Inches and the same is left for Air and Ventilation purpose. He had not intended to encroach the Plaintiff's property, and he made construction of Stair Case well within property, and not at all encroached the Plaintiff's property.

11. On 04.02.2025, this Court framed issued. The Issues No.1 to 3 are revolves around the encroachment construction and to demolish the same. According to the Plaintiff, the Defendant is adjacent house owner, and he encroached ½ feet of Suit 'A'

Schedule property which is described as Suit 'C' Schedule property and constructed Stair Case in it. It is pertinent to mention that in the above Suit, the Plaintiff has sought the relief for Mandatory Injunction against the Defendant. Therefore, in order to grant Mandatory Injunction as against the Defendant, it is just and necessary to this Court to find out that is there any encroachment in the Suit 'A' Schedule mentioned property which is described as Suit 'C' Schedule property. Also, to ascertain that is there any obstruction of Ventilation and Sunlight due to the alleged Construction made by the Defendant.

12. From the above, it is just and necessary to this Court to elucidate the matter in dispute, and to find out, is there any alleged construction made in the Suit 'A' Schedule property or not? In such case, mere oral evidence will not suffice in deciding the issue unless a local investigation is conducted. This Court is of the view that if the local investigation is conducted, it will help the Court to determine the said issues.

13. From the above discussions, this Court is of the view that the best evidence could be obtained only by the Appointment of Advocate Commissioner, and therefore, no pre-judice will be caused to the Respondent/Defendant by Appointing the Advocate Commissioner to inspect the entire Suit Schedule properties as per Sale Deeds of Plaintiff and the Defendant, and to note down the physical features of the same along with the help of Taluk Surveyor, and to measure total Plot No.33 and entire Suit 'A' and 'B' Schedule property, and specifically note the alleged encroachment construction of

Stair Case as detailed in the Suit 'C' Schedule property. In fact, the above Advocate Commissioner's report and plan would enable the Court for the purpose of throwing more enlighten to arrive at a fair decision, and thus, the appointment of an Advocate Commissioner is necessary to elucidate the ground realities. Accordingly, this point is answered.

14. **Result:-**

In fine, in the interest of justice, this petition is allowed. An Advocate **Thiru. K.Suresh (Enrollment No. Ms.5118/2019)** is appointed as Advocate Commissioner, and he is directed to inspect the petition Schedule mentioned properties, and to measure the same as per the Sale Deeds of Plaintiff and Defendant, and to note down the physical features of the same along with the help of Taluk Surveyor, and to measure total Plot No.33 and entire Suit 'A' and 'B' Schedule property, and specifically note the alleged encroachment construction of Stair Case as detailed in the Suit 'C' Schedule property, and prepare rough plan with the report and to file the same before 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 Tahsildhar, 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 26.03.2025.

-//Dictated to the Steno-typist, transcribed and computerized by her, corrected and pronounced by me in the Open Court on this the 07th Day of February – 2025.//-

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

Both side documents and witnesses: Nil

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