

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

Monday, this the 19<sup>th</sup> Day of February – 2024

**I.A.No. 3 of 2022**  
**In**  
**O.S.No. 161 of 2022**  
**(CNR.No.TNVL23-000248-2022)**

Arul

.....Petitioner/Plaintiff

-Vs-

Venda

.....Respondent/Defendant

This petition has come up today before this Court for orders, upon hearing the arguments of Thirumathi. V.S.Pavettraa, the Counsel for Petitioner, and Thiru. K.Krishnan, the Counsel for Respondent, 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 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 and finding out the physical features of the Suit Properties and Survey the same with a Licensed Surveyor and submit report with plan.

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

1.1 The petitioner is the plaintiff in the main suit, and he have filed the Suit for declaration, consequential Mandatory Injunction, Permanent Injunction not to construct and

Permanent Injunction not to interfere in his peaceful possession, and he states that he had purchased the suit 'A' Schedule property on 12.12.1997 vide Document No.457 of 1997, comprising 684 Sq.ft., in Natham Survey No.29 of Viruthampet Village, Katpadi Taluk, Vellore District. Since the purchase, the petitioner had constructed a building and had been residing at the aforementioned house until now, without any hindrances and Subsequent to the purchase of 'A' Schedule property, he had purchased 'B' Schedule property comprising 383 ½ Sq.ft., of Vacant Land in Survey No.29 of Viruthampet Village, Katpadi Taluk, Vellore District on 11.06.2003 vide Document No.2641 of 2003, adjacent to 'A' Schedule property. Thus, the petitioner own a total of 1067 ½ Sq.ft., of Land in the aforementioned Survey Number combining both 'A' and 'B' Schedule properties with common pathway of 3 feet to have access to his property from the Street.

1.2 The petitioner further states that the Respondent/defendant is his neighbour and the respondent have raised basement for constructing a building at her Land. Prior to raising construction on her land, the respondent have had constructed a Bathroom of 123.5 Sq.ft., comprising 9 ½ Sq.ft., from North-South direction and 13 Sq.ft., from Eastern-Western direction herein after mentioned as 'C' Schedule property in plaint. Initially, the petitioner was not aware that 'C' Schedule property was part part and parcel of his 'B' Schedule property, and he realized the same, when he decided to gift 'B' Schedule property to his eldest son one Gopi and enquired an engineer to Survey the Land a fortnight ago prior to sending of legal notice dated 24.06.2022.

1.3 While surveying the Land, the petitioner had found that the respondent had encroached upon his 'B' Schedule property, and therefore, the petitioner had approached the

respondent to demolish the construction raised on his land (mentioned in the 'C' Schedule property) and not to further annex the already encroached Land to respondent's upcoming construction. Whileso, the respondent orally had conceded that she had encroached upon the petitioner's 'B' Schedule property but adamantly refused to take any action upon it, and she had vehemently said that she would do as she please and that the petitioner can not take any action on it, and moreover she stated that she would continue to further annex the encroached construction to her raising building. Therefore, the respondent had clear knowledge about her encroachment on the petitioner vacant premises, and still continued to encroach upon his land knowingly, and she had wantonly done the encroachment and her actions have infringed the petitioner's right and are illegal. Moreover, the respondent is still continuing to give a hard time to the petitioner by proceeding to annex the encroached portion described in 'C' Schedule to her land despite his objections, and he have enclosed Original Photographs of the encroachment along with the plaint and the same may be read as part and parcel of this petition affidavit.

1.4 Due to the aforesaid reasons, the petitioner is filing this present petition to appoint an Advocate Commissioner to inspect and note the physical features of the Schedule properties with the help of the licensed Surveyor, and report the encroachment of the Schedule properties if any, as otherwise he would put to great loss and irreparable hardship, 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 sustainable either in legally, and factually, and the respondent denied the each and every averments of the affidavit, and states

the very application under Order 26 Rule 9 of CPC filed by the petitioner with ulterior motive to gather the evidence illegally legal mean is not sustainable either in law and on facts, and the Written Statement filed by her may read as part and parcel of the Counter, and the petitioner not at all entitle to get the discretionary order of this Court, and the measurement of the Schedule properties in the petition are all not correct, and the petitioner given wrong inference with misrepresentation of facts, and the petitioner approached this Court with unclean hands, and hence, the petition has to be dismissed with Cost.

2.2 The respondent further states that the petition filed to appointment of Advocate Commissioner to find out the encroachment who is encroached the property, but being a Suit for declaration and injunction, it is the duty on the petitioner to prove his case basing on his documentary evidence and cannot utilize an Advocate Commissioner of the Court to collect the evidence. It is well settled law that an Advocate Commissioner cannot decide who is in actual possession of the property, and encroachment of the property. As per various precedents, this Court cannot be entertained the petition, and the petitioner is not entitled to the relief on the vexatious petitioner and prayed to dismiss the petition with Cost.

3. Neither the petitioner nor the respondent 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 petitioner has filed this petition with a plea for appointment of an Advocate

Commissioner to inspect the Suit properties and finding out the physical features of the Suit properties, and Survey the same with a Licensed Surveyor, and submit report with plan the extent of the Suit properties and report of the encroachment of Schedule property.

6. The petitioner is the plaintiff in the Suit, and he has filed the above Suit for the relief of declaring his title, right and interest over the 'C' schedule of property namely Red Marked Portion in the plaint plan; and for Consequential granting an order of Mandatory Injunction directing the defendant to remove the illegal construction from the Red Marked on the 'C' Schedule of property raised by her, and if she failed to do so, the same may be removed through due process of law, and put him in possession & enjoyment of the same; and for Permanent Injunction against the defendant, restraining her, her men, servants, staff, agents, assigns, heirs, Successor-in-interest, representatives, authorized persons, relatives, others etc., from putting up any further construction in the Red Marked 'C' Schedule property, and for Permanent Injunction against the defendant, restraining her, her men, servants, staff, agents, assigns, heirs, Successor-in-interest, representatives, authorized persons, relatives, others etc., not to interfere his peaceful possession and enjoyment over the 'C' Schedule property, and for Costs.

7. Upon careful analysis of the above, it is noted the petitioner/plaintiff alleged that when he decided to give 'B' Schedule mentioned property to his eldest son one Gopi, and he enquired an Engineer to Survey the Land a fortnight ago prior to sending of Legal Notice dated 24.06.2022, and while surveying the Land, he had found that the respondent/defendant had encroached upon his 'B' Schedule vacant property, and raised construction on his Land is shown as 'C' Schedule property, and still continued to encroach upon his Land knowingly.

8. On contra, the respondent/defendant stated that the measurement of the Schedule properties are all not correct, and this petition is filed only to find out the encroachment who is encroached the property, but being a Suit for declaration and injunction, it is the duty on the petitioner to prove his case basing on his documentary evidence and cannot utilize an Advocate Commissioner of the Court to collect the evidence, and the Advocate Commissioner cannot decide who is in actual possession of the property and encroachment of the property, and the petitioner is not entitled to the relief on the vexatious petition.

9. From the above, it is admitted by the respondent/defendant that the petitioner/plaintiff is having the vacant land adjacent to the properties of her, and the respondent has not denied the construction made by her, but the respondent claims that the measurement of the Schedule of properties are all not correct. The petitioner/plaintiff alleged that prior to raising construction on the respondent's land, she have had constructed a Bathroom of 123.5 Sq.ft., comprising 9 ½ Sq.ft., from North-South direction and 13 Sq.ft., from East-West direction, which is actually had encroached & constructed on his 'B' Schedule which is shown as 'C' Schedule property.

10. It is pertinent to mention that the respondent has not specifically denied the same. In this suit, the petitioner/plaintiff seeking the reliefs for declaration of his right & title over the 'C' schedule of Suit property & to order remove the illegal construction from the Red Marked on the 'C' Schedule of property is made by the respondent/defendant as alleged by the plaintiff, and to order Permanent Injunctions as against the defendant, 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 which is shown as 'C' Schedule property marked as Red Colour portion in the Plaint Plan.

11. In such case, mere oral evidence will not suffice in deciding the issue of encroachment unless a local investigation is conducted. 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 by Appointing the Advocate Commissioner to visit the Suit properties along with the Surveyor, and note down the physical features, and 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.

12. **Result:-**

In fine, in the interest of justice, this petition is allowed. An Advocate Thiru.A.Ravivarman (MS1765/2012) is appointed as Advocate Commissioner and he is directed to inspect the Suit properties with the help of Taluk Surveyor and VAO, and note down the physical features of the entire 'B' Schedule Property; and alleged illegal encroachment construction (Bathroom of 123.5 Sq.ft., comprising 9 ½ Sq.ft., from North-South direction and 13 Sq.ft., from East-West direction) of the respondent/defendant on the Suit 'B' schedule property if any, and to file a detailed report & plan thereof on or before 27.03.2024. The Advocate Commissioner's remuneration is fixed at Rs.7,000/- and the petitioner is directed to pay the same to the Advocate Commissioner directly within 5 days. For Commissioner Report & Plan by 02.04.2024.

-//Dictated by me to the Steno-typist, who directly typed the same, corrected and pronounced by me in the Open Court, on this the 19<sup>th</sup> Day of February – 2024.//-

DISTRICT MUNSIF  
KATPADI

**Both side documents and witnesses: Nil**

DISTRICT MUNSIF  
KATPADI