



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 3rd DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

A. No.2526 of 2021

IN

C.S.No.720 of 2019

T.Vanajakshi,
W/o Late A.M.Thirunavukkarasu,
Residing at:
No.19/10, Cathedral Garden Road,
Nungambakkam,
Chennai – 600 034.

... Applicant/Plaintiff

-Versus-

1.M.Jayanthi,
W/o Late.T.Murugesh.

2.Tarun Murugesh,
S/o Late T.Murugesh.

Both are residing at:
New No.16, Old No.55,
(First Floor) Giri Road,
T.Nagar, Chennai – 600 017.

... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to inspect and note down the physical features in respect of the Plaint C Schedule property, more fully described in the schedule hereunder and file a report before this Hon'ble court.

This application coming on this day before this court for hearing in



Advocates for the Applicant herein and Mr.P.B.Balaji, Advocate for the respondents herein and upon reading the Judge's Summons and the affidavit of T.Vanajakshi, filed herein, it is ordered as follows:-

That a Warrant of Commission do issue herein out of and under the seal of this court that Mr.D.Selvaraju, Advocate, (Mobile Number 94440 88288), having office at No.903, New Law Chambers, Chennai-600 104, is appointed herein as the Advocate Commissioner and he is directed to inspect the physical features of the existing C-schedule property more fully set out in the schedule hereunder and file a report by 27.08.2021.

2. That the initial remuneration of the Advocate Commissioner appointed herein is fixed at Rs.50,000/- (Rupees fifty thousand only), which shall be borne by the applicant/plaintiff herein.

3. That the learned Advocate Commissioner appointed herein, shall, before causing inspection, duly give notice to the parties concerned as well as the learned counsels representing the parties and fix the time for his visit and inspection of the c-schedule property.

4. That the learned Advocate Commissioner appointed herein shall be paid the said initial remuneration immediately on receipt of the notice from the learned Advocate Commissioner on his visit and inspection of the C-schedule property, promptly.

5. That the parties hereto are hereby directed to extend their utmost



co-operation to the learned Advocate Commissioner appointed herein when he inspects the C-schedule property for the purpose of carrying out his assignment in terms of the warrant issued by this Court.

Schedule-C

All that piece and parcel of land and building bearing Municipal Door No.16 (Old No.55) Giri Road, T.Nagar, Chennai, comprised in S.No.41/5 Part, Old Paimash Nos.560, 567, 568 to 592 (Parts), T.S.No.8427, Block No.109, T.Nagar Village, Madras, measuring East to West 60 feet 3 inches on the South, 49 feet 6 inches on the North, North to South 146 feet 6 inches, on the East 141 feet on the West, ad-measuring in all 3 grounds 680 Sq.Ft. bounded on the:

North by : Door No.7, Habibullah Road;

South by : Giri Road;

East by : Door No.56, Giri Road

West by : Door No.54, Giri Road

situated within the Corporation Division No.107, Registration Sub-District of Theagaraja Nagar, Registration District of Madras-South.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 3rd DAY OF AUGUST 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)



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SK-11.08.2021

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A. No.2526 of 2021
IN
C.S.No. 720 OF 2019

ORDER :-
DATED : 03.08.2021

THE HON'BLE MR. JUSTICE
V.PARTHIBAN

FOR APPROVAL:12.08.2021

APPROVED ON:16.08.2021

Copy to:-

Mr.D.Selvaraju,
Advocate Commissioner
having office at No.903,
New Law Chambers,
Chennai-600 104.

(Mobile Number 94440 88288)

Correspondence to Note:-



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 3rd DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE V.PARTHIBAN

A. No.2526 of 2021

IN

C.S.No.720 of 2019

T.Vanajakshi,
W/o Late A.M.Thirunavukkarasu,
Residing at:
No.19/10, Cathedral Garden Road,
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... Applicant/Plaintiff

-Versus-

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W/o Late.T.Murugesh.

2.Tarun Murugesh,
S/o Late T.Murugesh.

Both are residing at:
New No.16, Old No.55,
(First Floor) Giri Road,
T.Nagar, Chennai – 600 017.

... Respondents/Defendants

to

Mr.D.Selvaraju,
Advocate Commissioner
having office at No.903,
New Law Chambers,
Chennai-600 104.

WHEREAS the above Application is filed by the applicant praying

<https://hcservices.ecourts.gov.in/hcservices/>

that this Hon'ble Court be pleased to to appoint an Advocate Commissioner



to inspect and note down the physical features in respect of the Plaint C Schedule property, more fully described in the schedule hereunder and file a report before this Hon'ble court.

WHEREAS in and by an order dated 3.08.2021 made in A. No.2526 of 2021 in C.S.No.720 of 2019, you have been appointed as a commissioner.

You as a commissioner, are hereby directed to inspect the physical features of the existing C-schedule property more fully set out in the schedule hereunder and file a report on 27.08.2021.

You as a commissioner, are hereby informed that the initial remuneration is fixed at Rs.50,000/- (Rupees fifty thousand only) to you, which shall be borne by the applicant/plaintiff.

You as a commissioner, are hereby informed that before causing inspection, duly give notice to the parties concerned as well as the learned counsels representing the parties and fix the time for your visit and inspection of the c-schedule property.

You as a commissioner, are hereby informed that you shall be paid the said initial remuneration immediately on receipt of your notice and on your visit and inspection of the C-schedule property, promptly.

You as a commissioner, are hereby informed that the parties are hereby directed to extend their utmost co-operation to you, when you



inspects the C-schedule property for the purpose of carrying out your assignment in terms of the warrant issued by this Court.

Schedule-C

All that piece and parcel of land and building bearing Municipal Door No.16 (Old No.55) Giri Road, T.Nagar, Chennai, comprised in S.No.41/5 Part, Old Paimash Nos.560, 567, 568 to 592 (Parts), T.S.No.8427, Block No.109, T.Nagar Village, Madras, measuring East to West 60 feet 3 inches on the South, 49 feet 6 inches on the North, North to South 146 feet 6 inches, on the East 141 feet on the West, ad-measuring in all 3 grounds 680 Sq.Ft. bounded on the:

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West by : Door No.54, Giri Road

situated within the Corporation Division No.107, Registration Sub-District of Theagaraja Nagar, Registration District of Madras-South.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
3RD DAY OF AUGUST 2021.



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SK-07/04/2021

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A. No.2526 of 2021
and
C.S.No.720 of 2019

WARRANT OF COMMISSION

THE HON'BLE MR.JUSTICE
V.PARTHIBAN

Copy to:-

Mr.D.Selvaraju,
Advocate Commissioner
having office at No.903,
New Law Chambers,
Chennai-600 104.

(Mobile Number 94440 88288)



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2021

Coram:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Application No.2526 of 2021
in
C.S.No.720 of 2019

T.Vanajakshi,
W/o Late A.M.Thbirunavukkarasu .. Applicant/plaintiff

Vs.

1. M.Jayanthi, W/o Late T.Muruges
2. Tarun Muruges, S/o Late T.Muruges .. Respondents/defendants

Judge's Summons issued under Order XIV Rule 8 of the Original Side Rules of this Court read with Order XXVI Rule 9 of the Code of Civil Procedure (CPC) and this application is filed praying to appoint an Advocate Commissioner to inspect and note down the physical features in respect of the Plaint C-Schedule property, morefully described in the Schedule hereunder and file a report before this Court.

Schedule-C

All that piece and parcel of land and building bearing Municipal Door No.16 (Old No.55) Giri Road, T.Nagar, Chennai, comprised in S.No.41/5 Part, Old Paimash Nos.560, 567, 568 to 592 (Parts), T.S.No.8427, Block No.109, T.Nagar Village, Madras, measuring East to West 60 feet 3 inches on the South, 49 feet 6 inches on the North, North to South 146 feet 6 inches, on the East 141 feet on the West, ad-measuring in all 3 grounds 680 Sq.Ft. bounded on the:



North by : Door No.7, Habibullah Road;

South by : Giri Road;

East by : Door No.56, Giri Road

West by : Door No.54, Giri Road

situated within the Corporation Division No.107, Registration Sub-District of Theagaraja Nagar, Registration District of Madras-South.

For applicant : Mr.T.V.Ramanujan, Senior Counsel for
Mr.B.Arvind Srevatsa

For respondents: Mr.P.B.Balaji

ORDER

This application is filed by the plaintiff to appoint an Advocate Commissioner to inspect and note down the physical features in respect of the Plaint C-Schedule property (morefully quoted above).

2. The suit in C.S.No.720 of 2019 is filed for the following reliefs:

(a) for declaration that the plaintiff is the absolute owner of the property morefully described in the Schedule B to the plaint and to direct the defendants to deliver vacant possession of the Plaint-B Schedule property;

(b) for a preliminary decree granting 1/2 share to the plaintiff in the



an Advocate Commissioner to divide the Plaintiff-C schedule property into two equal shares by metes and bounds;

(c) to direct the defendants to render true and proper accounts for the income being rents received from the Plaintiff B-schedule property from 14.12.2016;

(d) for permanent injunction restraining the defendants, their men, servants, agents, anyone claiming under them and acting on their behalf from in any way alienating, encumbering or dealing with the Plaintiff-B and 1/2 share in the C-Schedule properties in any manner whatsoever; and

(e) to direct the defendants to pay the costs of the suit.

3. In the above suit, in O.A.No.1141 of 2019, this Court granted interim injunction as prayed for, vide order dated 19.12.2019, which has been extended from time to time.

4. The defendants have filed their written statement in the suit and also filed counter affidavit in the said O.A.No.1141 of 2019. This Court framed issues in the above said suit on 08.04.2021 and directed the suit to be listed before the learned Master for recording evidence. Due to Covid-19



pending at the stage of recording the evidence in the suit.

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5. It is also stated by the applicant/plaintiff that the second defendant got married in January 2021 and the plaintiff had not attended the same due to Covid-19 pandemic. The applicant/plaintiff came to know from her niece and other relatives that when they had visited the suit C-Schedule property, they have noticed that several structural alterations and modifications have been made to the ground floor of the property at No.55, Giri Road, T.Nagar, Chennai (C-schedule property). The said act of the defendants in making structural alterations and modifications, is behind the back of the applicant/plaintiff. The applicant/plaintiff claims the relief of partition and separate possession in respect of 1/2 share in C-schedule property.

6. It is further averred by the applicant in the application that as per Clause 4 of the Deed of Family settlement deed, dated 22.01.1987, the property be taken jointly in equal moiety between the plaintiff and late T.Murugesh and it is specifically mentioned therein that the property shall not be dealt with in any manner whatsoever without the written consent of the applicant/plaintiff. It is the specific case of the applicant/plaintiff that she is in joint possession of C-schedule property as co-owner and her

furniture and belongings are kept in her bedroom on the ground floor of



plaint C-schedule property.

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7. It is the grievance of the applicant/plaintiff that the defendants have altered the physical features and structures on the ground floor of plaint C-schedule property by demolishing walls in the kitchen, hall and bed-room walls, without the consent of the applicant/plaintiff.

8. Hence, for the reasons stated above, the applicant/plaintiff has filed the present application for appointment of an Advocate Commissioner to inspect and note down the physical features of plaint C-schedule property.

9. The respondents have filed counter affidavit stating that the contention of the applicant/plaintiff that the defendants had made structural alterations or modifications, is only a hear-say. There was only shifting of kitchen to one of the bed-rooms in view of "Vaasthu" advice given to the defendants, more particularly, the shifting of kitchen as per Agni Moola. The old kitchen had been retained as store room. Further, only cement work had been carried out in the flooring in the shed adjoining the main building to prevent the rodents from entering the premises, apart from re-painting the same.



10. It is the main stand of the defendants in their counter affidavit that they had been residing in the house for the past three decades and that the property in question had been settled absolutely on the defendants based on the settlement deed. There is no need for appointment of Advocate Commissioner as such. The defendants being residents and owners of the subject property, would not cause any damage to the structure or otherwise affect the utility of the building in any manner whatsoever. The defendants further state that they will not carry out any structural alterations pending suit. Even in respect of the minor modification carried out by the defendants, though no structural or material alteration has been made altering the value or utility of the building, the defendants state that they will not claim any equity in respect of such changes whatsoever in the event of the plaintiff succeeding in the suit. The defendants pray that this undertaking may be recorded. Thus, the defendants prayed for dismissal of the present application.

11. This Court heard the submissions made on either side and perused the entire materials available on record.

12. At this juncture, it has to be noted that the learned counsel for the respondents/defendants in O.A.No.440 of 2021 in C.S.No.720 of 2019,



submitted that, his clients, viz., the respondents herein, have given an undertaking that they will not physically undertake any work and they will not alter the physical structure of the schedule property (i.e. C-schedule property) and in view of the said undertaking given by the respondents that they will not alter the physical features of the schedule property (i.e. C-schedule), the said O.A.No.440 of 2021 was closed by this Court today (03.08.2021).

13. As far as the present application for appointment of Advocate Commissioner is concerned, taking into consideration the over-all circumstances and the facts pleaded by the rival parties, and also taking into account the fact that the plea of the applicant/plaintiff that the defendants had made structural modifications in the suit C-schedule property, the present application is allowed, by appointing Mr.D.Selvaraju, Advocate, as Commissioner (Mobile Number 94440 88288), having office at No.903, New Law Chambers, Chennai-600 104, who shall inspect the physical features of the existing C-schedule property. The initial remuneration of the Advocate Commissioner is fixed at Rs.50,000/- (Rupees fifty thousand only), which shall be borne by the applicant/plaintiff. The learned Advocate Commissioner, shall, before causing inspection, duly give notice to the parties concerned as well as the



learned counsels representing the parties and fix the time for his visit and inspection of the c-schedule property. The learned Advocate Commissioner shall be paid the said initial remuneration immediately on receipt of the notice from the learned Advocate Commissioner on his visit and inspection of the C-schedule property, promptly. The parties are directed to extend their utmost co-operation to the learned Advocate Commissioner when he inspects the C-schedule property for the purpose of carrying out his assignment in terms of the warrant issued by this Court.

Sd./-(V.P.N.J.,)

03.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.