



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.34 of 2017 (PD) and
C.M.P(MD)No.149 of 2017

Alamelu

.. Petitioner/Petitioner/
Plaintiff

Vs.

Rengasamy

..Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to prefer this Memorandum of Civil Revision Petition against the fair and decreetal order in I.A.No.316 of 2015 in O.S.No.108 of 2015 dated 19.10.2016, on the file of the District Munsif cum Judicial Magistrate Court, Orathanadu.

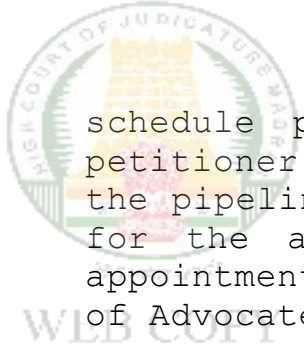
For Petitioner : Mr. P.T.Ramesh Raja

ORDER

This Civil Revision Petition is filed against the fair and decreetal order in I.A.No.316 of 2015 in O.S.No.108 of 2015 dated 19.10.2016, on the file of the District Munsif cum Judicial Magistrate Court, Orathanadu.

2. The petitioner is the plaintiff. The respondent is the defendant. The petitioner filed O.S.No.108 of 2015 dated 19.10.2016, on the file of the District Munsif cum Judicial Magistrate Court, Orathanadu for permanent injunction restraining the respondent from interfering with the easementary right of the petitioner over the pipelines laid through "B" schedule property. The petitioner filed I.A.No.316 of 2015 for appointment of Advocate Commissioner to inspect the suit property with the help of Surveyor to measure the property and file his report with regard to pipeline laid by her husband at 3 Ft. depth and 190 Ft. length through "B" schedule property.

3. According to the petitioner, there was oral partition on 02.10.1993 and "A" schedule property was allotted to her husband and "B" schedule property was allotted to the respondent. While her husband was alive, he laid pipeline through "B" schedule property. Her husband died on 28.07.2016. Even after her husband's death, she is taking water through pipeline laid in "B" schedule property. Her husband is taking water for cultivating his land in "A" schedule property.



schedule property. Due to the misunderstanding between the petitioner and the respondent, the respondent is trying to remove the pipeline laid in "B" schedule property. Hence, she filed suit for the above said relief and filed present application, for appointment of Advocate Commissioner and stated that appointment of Advocate Commissioner is necessary.

4. The respondent filed counter and denied all the averments made by the petitioner and stated that there is no pipeline is in existence in "B" schedule property as alleged by the petitioner. Her husband did not lay any pipeline in his land and was not taking any water from "B" schedule property. The petitioner in the year 2011 tried to lay down pipeline in "B" schedule property which was prevented by the respondent. In the circumstances, application for appointment of Advocate Commissioner, is not maintainable.

5. The learned Judge considering the averments made in the affidavit and counter affidavit and the materials on record, dismissed the application holding that the petitioner has filed suit for injunction and she has to prove the same by letting in acceptable evidence.

6. Against the said order of dismissal, the present Civil Revision Petition is filed.

7. The learned counsel appearing for the petitioner reiterated the averments mentioned in the grounds of revision and in the affidavit filed in support of the application for appointment of Advocate Commissioner and submitted that the appointment of Advocate Commissioner is necessary. He further submitted that the learned Judge failed to see that the application for appointment of Advocate Commissioner would elucidate the dispute between the petitioner and respondent and prayed for allowing the Civil Revision Petition.

8. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

9. The petitioner filed suit for permanent injunction stating that the petitioner is having easmentery right of water through pipeline laid through the "B" schedule property belonging to the respondent to "A" Schedule property of the petitioner. The respondent has denied the averments made by the petitioner and submitted that there is no pipeline existed in the land of the respondent. He further contended that in the year 2011, the petitioner tried to lay the pipeline in his land and the respondent prevented her. The petitioner has filed suit for permanent injunction and she has to prove her case to get relief of permanent injunction by letting in acceptable evidence. It is well settled that it is not open to the parties to collect the evidence through



Advocate Commissioner. The learned Judge has considered all the materials on record in proper perspective and dismissed the application by giving cogent and valid reasons. In such circumstances, there is no illegality or irregularity warranting interference by this Court.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Record)

/True Copy/

Sub Assistant Registrar

To

The the District Munsif cum Judicial Magistrate Court,
Orathanadu.

Trp
SM:SV-MMS:22.02.2017:3p/2c

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