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CRP(MD)No.1363 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2021

PRONOUNCED ON : 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRP(MD)No.1363 of 2014

MP(MD)No.1 of 2014

(Through Video Conferencing)

P.Durairaj

Petitioner/Petitioner
Appellant/Defendant

Vs

R.Muthusamy

Respondent/Respondent
Respondent/Plaintiff

Prayer:- This Civil Revision Petition has been filed, against the fair and decreetal order, dated 21.02.2014, made in IA.No.36 of 2012 in AS.No.17 of 2011, by the Subordinate Judge, Kulithalai.

For Petitioner : Mr.G.Sridharan

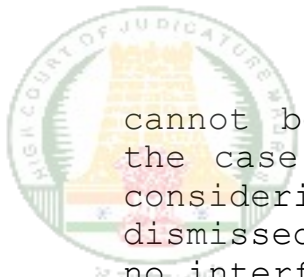
For Respondent : Mr.H.Lakshmi Shankar

ORDER

- 1.This Civil Revision Petition has been filed, against the fair and decreetal order, dated 21.02.2014, made in IA.No.36 of 2012 in AS.No.17 of 2011, by the Subordinate Judge, Kulithalai.
- 2.The facts of the case, in a nutshell, are that the Defendant is the Petitioner and the Plaintiff is the Respondent. The Plaintiff had filed OS.No.192 of 2008 for permanent injunction and the suit was decreed and as against the same, the Defendant had filed AS.No.17 of 2011 and in the appeal, the Defendant had filed the above application to appoint a Commissioner to inspect the suit property and to note down the existence of pipe line and the cultivation of the suit property through pipe line and to note down the physical features of the suit property and to file a report and plan. Since the said application was dismissed by the impugned order, this Civil Revision Petition has been filed.



- 3.The learned counsel for the Petitioner has submitted that in another suit in OS.No.218 of 2006 filed by the Respondent, a Commissioner was appointed and the physical features of the suit property were noted down and that since the issue in the present suit is with regard to the pipe line, it is necessary to note down the existence of the pipe line, by appointment of an Advocate Commissioner and hence, the court below erred in denying to grant the said relief.
- 4.The learned counsel for the Respondent has submitted that when there is no dispute with regard to the identity of the property and when earlier also the Advocate Commissioner had already inspected the same suit properties twice and filed his report and plan, again appointment of Advocate Commissioner is not necessary and that only drag on the proceedings, the application had been filed and hence, the impugned order was rightly passed, dismissing the application.
- 5.This court heard the learned counsel on either side and considered their submissions and also carefully perused the materials placed on record.
- 6.According to the Petitioner, since the Petitioner is cultivating the suit property on lease by irrigation through the pipe line, to note down said feature, appointment of Commissioner is necessary. The relief claimed in the suit is for permanent injunction restraining the Defendant from laying a pipe line in the suit property. The court below, on perusal of the records, had found that already the suit property was inspected twice in the present suit and another suit and a report and plan of the Advocate Commissioner were filed twice and hence, held that the appointment of Advocate Commissioner was not necessary in respect of the very same suit property and accordingly, dismissed the application.
- 7.'Physical features' means 'all the visible and invisible things' in the property and also includes the things to be pointed out by the parties at the time of inspection. At the time when earlier the suit property was inspected twice, when the suit prayer itself relating to the pipeline, the Petitioner should have pointed out the pipe line allegedly put up by him in the suit property to the Advocate Commissioner to note down the same in his report and plan, but he failed to do so.
- 8.When the Petitioner already missed the opportunity, that too twice, again for the third time, he came forward with the present application for the very same relief in respect of the same property and it would amount to delaying tactics. Furthermore, it is well settled that the Advocate Commissioner



cannot be appointed to collect the material evidence to prove the case. In the opinion of this Court, the court below, after considering all the aspects in proper perspective, had correctly dismissed the application, by the impugned order, which warrants no interference.

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9.In fine, this Civil Revision Petition is dismissed. No costs. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

Srcm

To

1.The Subordinate Judge, Kulithalai

2.The District Munsif, Kulithalai.

Copy to

The Section Officer(Records)
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.SRIDHARAN, Advocate (SR-27145[F] dated 25/08/2021)

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-27228[F] dated 25/08/2021)

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RD (09.09.2021) 3P 6C