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C.R.P.(P.D).No.792 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2024

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THE HON'BLE Mr. JUSTICE V. SIVAGNANAM

**C.R.P.(PD) No.792 of 2024
and CMP.No.3926 of 2024**

Sudhakar

...Petitioner

Vs

Vengamalai

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 04.11.2023 made in I.A.No.2 of 2023 in O.S.No.18 of 2015 on the file of the District Munsif Court, Ulundurpet.

For Petitioner : Mr.C.Munusamy

ORDER

Challenging the dismissal order dated 04.11.2023 in I.A.No.2 of 2023 to appoint an Advocate Commissioner to ascertain the situation of the disputed Well, the present Civil Revision Petition has been filed.



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2. The petitioner has filed a suit before the Additional District Munsif Court, Ulundurpet in O.S.No.18 of 2015 seeking a relief of declaration and mandatory injunction. The petitioner has filed I.A.No.2 of 2023 seeking for appointment of an Advocate Commissioner to ascertain the exact position of the Well - whether it is situated in the plaintiff's land or in the defendant's land. The learned trial Judge has negatived the prayer sought for on the ground that earlier in the year 2015, a similar prayer was made by the petitioner and an advocate was appointed to ascertain the presence of Well in the subject land. Advocate Commissioner has filed this report on 01.12.2017 along with map. Report and map were marked as Ex.C1 & Ex.C2 respectively. Both sides have not raised any dispute and commissioner's report and map were taken on file. After a lapse of six years and after completion of evidence on both sides, the petitioner has filed the above interlocutory application seeking the very same prayer. Since both sides have not raised any objection when initial report was filed by the advocate, the learned trial Judge observed that there was no need or necessity for appointing another advocate for the very same purpose. The learned trial Judge has further observed that the commissioner has stated in his report that the



lands could not be measured by meets and bounds and therefore entire survey number was measured and report was filed. With the above observation, I.A was rejected by the learned trial Judge. Challenging the same present civil revision petition has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on record.

4. Though the learned counsel appearing for the petitioner vehemently contended that a commissioner should be appointed to ascertain the exact position of the Well, I do not see any reason to go into the merits of the order passed by the learned trial Judge. The learned trial Judge has clearly observed that in the year 2015 a similar prayer was made and the same was accepted, report and map were filed by the Advocate Commissioner and no objection were raised by both sides and they were marked as Court exhibits. In such a scenario, there is no change of circumstances or change in the character of the suit property.

5. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, the Civil



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Revision Petitions stand dismissed. Consequently, connected
Miscellaneous Petition is closed. No costs. Consequently, connected
miscellaneous petition is also closed.

12.03.2024

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Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To

The District Munsif Court,
Ulundurpet.



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V. SIVAGNANAM, J.

dpq

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