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C.R.P.No.223 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.B. BALAJI

C.R.P.No.223 of 2025
and
C.M.P.No.1483 of 2025

Padmanaban

... Petitioner

Vs.

Krishnamoorthy

... Respondent

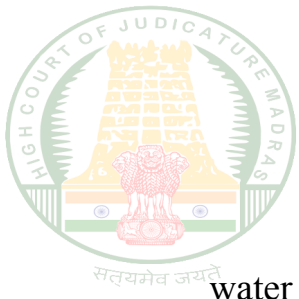
Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order passed in I.A.No.119 of 2023 in O.S.No.80 of 2016 on the file of the District Munsiff cum Judicial Magistrate Court, Arcot, Vellore District now Ranipet District, dated 22.01.2024, by allowing the present Civil Revision Petition.

For Petitioner : Mr.Ma.P.Thangavel

For Respondent : Mr.V.Prakash Babu

ORDER

The plaintiff, aggrieved by the dismissal of his application for appointment of advocate commissioner to establish the existence of the

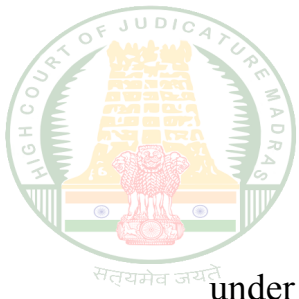


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water pipeline running under the Schedule B property, has come up by way of this revision.

2. The case of the plaintiff is that the plaintiff enjoys an easementary right through the defendant's property in order to supply water from the well in Schedule A property belonging to the plaintiff to Schedule C property, which also belongs to the plaintiff. However, both the properties in Schedule A and C are separated by Schedule B property, which admittedly is belonging to the defendant. The specific case of the plaintiff is that there was an oral arrangement between the plaintiff's father and the defendant's father, permitting the plaintiff's father to take the pipeline through B schedule property belonging to the defendant's father. Thereafter, the pipeline running 44 metres in length and a depth of 4½ ft was also installed and ever since 1995, according to the plaintiff, the said pipeline has been supplying water from the lands in Schedule A property to Schedule C property, and both the properties belonging to the plaintiff, the plaintiff has approached this Court for establishing his easementary rights and for permanent injunction. The said suit has been resisted by the defendant denying the existence of the pipeline running



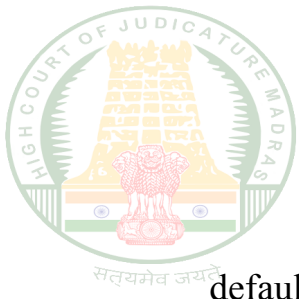
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under the Schedule B property, connecting the properties in Schedule A and Schedule C. The defendant also denied any oral arrangement between the plaintiff's father and the defendant's father. The Trial Court has dismissed the application filed by the plaintiff, against which, the present revision has been filed.

3. Learned counsel for the petitioner would state that in order to establish the easementary right of the plaintiff and the existence of the pipeline connecting properties in Schedule A and Schedule C, the application was taken out. Further, the very specific case of the plaintiff is that the understanding between the fathers of the plaintiff and the defendant was oral and therefore, there is no other avenue open to the plaintiff to establish the existence of the pipeline. Therefore, he prays for the revision being allowed.

4. Learned counsel for the respondent state that when the defendant has specifically denied the averments in the plaint and also in view of the conduct of the plaintiff in dragging the proceedings by not appearing in the suit, even when it was posted in the list for dismissal for



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default and even thereafter, after seeking several adjournments, the present application has been filed, it would only clearly show that the plaintiff is not interested in prosecuting the suit. Further, he also brings to my notice that the respondent is doing agricultural activities in Schedule B property and if the commissioner is appointed with a direction to find out the existence of pipeline at a depth of 4 ½ ft. running to a length of 44 metres, it would virtually ruin the lands of the defendant and the defendant would be put to serious loss and prejudice. The Trial Court has also held this to be a valid reason to reject the application for appointment of Advocate Commissioner besides holding that the plaintiff had approached the Court belatedly.

5. I have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned counsel for the respondent.

6. Admittedly, the plaintiff has sought for the relief of easementary rights of necessity to supply water to Schedule C property from Schedule A property well, running through Schedule B property, belonging to the



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defendant. The cause of action in the suit itself is based on an oral understanding between the plaintiff's father and the defendant's father. Therefore, when there is no documentary evidence to establish the arrangement or permission granted by the defendant's father, the burden is certainly heavily on the plaintiff to establish the same on trial. Only for this purpose, in order to falsify the claim of the defendant that there is no pipeline running underneath, the plaintiff has taken out the present application. However, at the same time, as rightly pointed out by the learned counsel for the respondent that in order to establish the existence of the water pipeline running across the defendant's property, unless his lands are dug-up, the Commissioner will not be in a position to identify whether a pipeline is running underneath the property. However, the learned counsel for the petitioner would suggest an alternative stating that without digging any land belonging to the defendant in Schedule B property set out in the suit property, the lands belonging to the plaintiff at the end point of Schedule A property as well as the beginning of Schedule C property can be dug-up to a depth of 4½ ft without in any manner affecting lands in Schedule B property. Such an exercise by appointing Advocate Commissioner would certainly establish whether



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there is a pipeline connecting the Schedule A lands with the Schedule C lands, without prejudicing the interest of the defendant.

7. In the light of the above, I see no harm or prejudice caused to the defendant in appointing an Advocate Commissioner to find out the physical features of the property, more specifically, the properties in Schedule A and Schedule C.

8. In view of the above, I am inclined to set aside the impugned order and accordingly, the same is set aside. The Trial Court shall appoint an Advocate Commissioner with a specific direction to dig only the end point of Schedule A property and the beginning point of Schedule C property belonging to the plaintiff, without in any manner affecting or disturbing the defendant's peaceful possession or occupation of the Schedule B property, with a specific warrant to find out if there is any pipeline connecting plaintiff's A Schedule lands to Schedule C lands. It will be open to the parties to examine the Advocate Commissioner viz., chief or cross examination, if deemed necessary. The Trial Court shall ensure that the report of the Advocate Commissioner is received within a



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period of four (4) weeks from the date of receipt of a copy of this order and the trial of the suit shall also be expedited, considering the fact that the suit is of the year 2016. The said suit shall be disposed of on merits and in accordance with law, within a period of six (6) months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

23.06.2025

Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation Case : Yes / No
sp

To

The District Munsiff cum Judicial Magistrate Court, Dharmapuri, Arcot,
Vellore District (now Ranipet District).



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P.B. BALAJI, J.

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