

**IN THE COURT OF THE DISTRICT MUNSIF, TIRUTTANI**

Present : Tmt. S. KAVI PRIYA, B.A., LLB.,  
District Munsif, Tiruttani

Dated this Thursday, the 8<sup>th</sup> Day of April 2021

IA.No.16/2018 in OS.No.6/2018

....

M. Jayaraman

...Petitioner/ Plaintiff

/Versus/

1. Neelakandan

2. Duraisamy

3. Mohan

4. Vasanthammal (died)

5. The Station House Officer, K.K. Chattram Police Station,

6. The Inspector of Police, Tiruvalangadu Circle,

7. Dillibabu

*(Impleaded as per order in IA.No.428/2018, dated 26.11.2018, and amended as per order in IA.No.1/2019, dated 18.01.2019)*

...Respondent/Defendant

This petition came up before me for final hearing on 25.03.2021 in the presence of M/s. V.S. Velayudham, J, Saravanan and I. Sudhapriayan, Advocates for petitioner and 4<sup>th</sup> respondent died, Mr.G. Kamalakannan, Counsel for respondents No.1 to 4 and 7 and Respondents No. 5,6 No representation, set exparte, upon hearing both side, after perusing records and having stood over for consideration till this day, this court delivered the following:

**ORDER**

This petition is filed under order 26 Rule 9 of CPC to appoint an Advocate

Commissioner to note down the physical features, existence of bore wells and under earth pipe lines are irrigating the water to the plaintiffs other lands and to file his report with rough sketch.

**Petition filed on behalf of the petitioner in brief in as follows:**

2. The petitioner is the absolute owner of lands in suit schedule of property and the petitioner got the said property through settlement deed dated 15.02.2017 under document No.288/2017 on the file of Sub Registrar office at Tiruttani from his brother namely Veeraraghavalu Naidu who bequeathing suit property and other properties to the petitioner. The petitioner is also accepted the said registered settlement and same was acted upon. The petitioner is in possession and enjoyment of the said land from the date of settlement deed to till date. The patta for the said properties also stands in the name of petitioner bearing No.240. The settler namely Veeraraghavalu was already laid under earth pipes to an extent of 2500 sq.feet for irrigation of water for all the lands mentioned under settlement deed from the S.No.13/3C, now sub divided as 13/3C1, a bore well was dugged by him very long back and from that borewell the 3 inch pipes were erected more than 6 feet under earth of his lands also through the lands of Anjjejiyammal, W/o. Sanjeevi Naidu, Narasimulu Naidu S/o. Murugappa Naidu, Muthammal, w/o. Ramalinga Naidu, Govinda Naidu, S/o. Murugappa Naidu, Duraisamy, Beeman, S/o. Narasimhan, Sarojammal, W/o.Kistapa Naidu the under earth pipes were erected with their consent and knowledge and he pipes will not affect anybody lands and pipes erected under earth is as per village customs and there is no other alternative way to irrigate the

water to the lands belongs to the petitioner except through the said under earth pipes the water took through said pipe line to his other lands from bore well situated in the S.No.13/3C1. The said pipe line erected for ingress and egress for the way to irrigate the water to other lands from bore well. There is no alternative way to get water for irrigation of lands for cultivation of all lands in Patta No.240 which is enclosed h herein. The petitioner settler was already used the under earth pipeline through the above said persons lands for more than 22 years and he was got the same for easement right. The plaintiff is also using the said bore well and also irrigation of water from the bore well to his other lands for cultivation of lands. The above said lands owners never raise any abjection. There is no channels or any other way except irrigation of water through under earth pipeline alone. The petitioner is also dugged a borewell in land in S.No.9/6 for insufficient water in the already existing bore well for cultivation in the month of March 2017 and the petitioner linked the under earth pipes which is already exist and the plaintiff is using the both bore wells for irrigation of water to the lands. Now paddy crops and groundnut was raised in the lands belongs to himself in patta No.240 and only through the under earth pipe line water alone source for cultivation of lands belongs to the plaintiff. The above said Anjiyammal who is land owner of S.No.13/1C under patta No.23 was died in the last month, leaving behind the defendants No.1,2,4 are the sons and daughter of the said Anjiyammal. The 3<sup>rd</sup> defendant is son of 1<sup>st</sup> defendant. The said Anjiyammal was given consent for erecting the under earth pipelines through her lands to the plaintiff's settler namely Veeraraghavalu. Now the defendants 1 to 4 are giving troubles to the

plaintiff due to their family dispute and they compelled to the plaintiff to remove the under earth pipelines erected through the lands of Anjiyammal for past 2 weeks. But they have no right to do so, since, they have Anjiyammal for past 2 weeks. If the under earth pipes are to be removed the petitioner will be put into much loss and hardship since he is cultivating lands and now the petitioner is raised a paddy crops and groundnut in the lands to be damaged and put to heavy loss since the water flow to the all his lands through the said under earth pipe lines also. The said under earth pipelines no way causing any disturbance or nuisance to the land owners. The 1<sup>st</sup> defendant lodged a false complaint against plaintiff, his sons and his wife for alleging falsely threatening the 1<sup>st</sup> defendant when he was demanding for removal of pipelines. The 5<sup>th</sup> and 6<sup>th</sup> defendants are enquired the petitioner and directing him to remove the under death pipeline in the Anjiyammal lands failing which they foisted a false criminal case against the plaintiff and his family members and also they will remove the under earth pipelines. The defendants 5 and 6 are no power to entertain civil dispute and they have no authority to remove the pipelines and they are bias towards the defendants threatening the plaintiff to remove the under earth pipeline. The defendant No.4 alone having title, right and interest over the lands in S.No.13/1C and she got the same through the registered Will deed dated 17.11.2017 bequeathed by her mother namely Anjiyammal. The said Will is not returned to the 4<sup>th</sup> defendant due to reason that the said document was registered under section 47A of Indian Registration Act. In the above circumstances, the petitioner has no other option except to file the suit. The balance inconvenience will be on the petitioner if

injunction order is not granted in favour of him against the respondent/defendant. No prejudice is caused to the respondent if injunction is granted in favour of the petitioner.

3. Memo filed by the respondents and adopted by their written statement is as counter in this petition.

**Counter in brief in as follows:-**

4. The plaintiff's brother Veeraraghavalu laid the pipe line in the absence of this defendants in the village in the year of 2012. The defendants after return to the village from Chennai at that time, the defendants found the pipe line in the land of this defendants. The defendants never given any consent to laid the pipe line under the earth in the property of the defendants. The defendants object the high action of plaintiff's brother and removed the portion of pipe line at that time by the defendant and the plaintiff's brother Veeraraghavalu convened the meeting in village level about to arrive the compromise in between Veeraraghavalu and this defendants. Later the defendants agreed to the village mediation and in which the plaintiff would ready to remove the pipeline within 6 month after drill another bore well. The defendants have approached the village mediators direct to the plaintiff's brother Veeraraghavalu but he declines to remove the pipe line. The plaintiff will not remove the pipeline. Even after several mediation took place in the village level and no fruitful result come out of that. At one stage the enmity in between plaintiff's brother and defendants started, with that effect the plaintiff's brother and plaintiff joined together taken long time to remove the pipe line from the defendant's property. The defendants submit that at last

approached the police station to take action against the plaintiff's brother and plaintiff. The defendants given the appropriate complaint to K.K.Chatiram police station. The police authorities properly enquired the matter and the plaintiff has agreed upon to remove the pipe line from the defendant's land. The defendants never given any implied or expressed permission to the plaintiff or his brother. The defendants want to plant the mango and coconut trees in the suit property and for which the defendants has to dig the earth up to four feet depth to cultivate the coconut plants. Hence, to equalization the land, the respondent have necessity to remove the pipe line in his land. The settlement deed dated 15.02.2017 Doc.No.288/2017 relied upon the plaintiff and in which the document never reveals about pipe line or mode of irrigation anything else in the deed of settlement, while so, the plaintiff have no right to claim the pipe line way in the property of this defendant. Because, that itself shows the ready and willingness to remove the pipeline from the property of this defendants. The plaintiff have a new bore well digged in the S.No.9/6 and in which sufficient water came out from that bore well. So, the plaintiff averments about that no sufficient water comes in the new bore well is false. The defendant No.4's mother and one Sarojammal purchased the S.No.13/1 to the extent of 6.38 acres from one Parasuraman Naidu on 25/11/1957 for valid consideration. According to that the said Anchiammal and Sarojammal never executed any deed in favour of Jayaraman or Plaintiff's brother Veeraraghavalu. The S.No.13/3C is the property owned by Anchiammal and Sarojammal. The well mentioned in the S.No.13/3C is not available in that field and on ther hand it is in the "Kosasthalai river bed". So, the plaintiff

contention that as if the false and never such bore well available in the said survey number. The other members mention in the plaint in the village that they given consent to lay the pipe into their lands is not known to this defendant. No bore well available in S.No.13/3C1 and no bore well available adjacent to that survey number. The plaintiff settler was already used the under earth pipe line for more than 22 years is utter false and as he claimed this right has an easement right also not tenable/ The easement right will applicable to natural ways and not applicable for artificial ways like pipe line. The defendants having EB service connection in the bore well in S.No.9/6 alone and no service connection to the bore well mentioned by the plaintiff as if in S.No.13/3C1. The plaintiff has promised at last to remove the pipe line after the bore well digged in the S.No.9/6 but plaintiff not heeds upon the remove the pipeline till date. The pipe line is very much hardship given to defendant No.1 to 4 to cultivate the lands and if the pipeline not removed then the defendant NO.1 to 4 will put to irreparable loss and hardship. The registered Will dated 17.11.2017 of Anchiammal is a created under the inducement of plaintiff's brother Veeraraghavalu. The said Will is not acted. The defendants No.1 to 4 are enjoying the property has jointly. The Will dated 17.11.2017 is unknown to 4<sup>th</sup> defendant and the 4<sup>th</sup> defendant has not accepted the Will. On other hand she ready to give up half share to 1<sup>st</sup> defendant. Hence, this petition is liable to be dismissed.

**Point for determination:-**

5. Whether the petitioner is entitled to appoint an Advocate Commissioner?

Heard. Records perused.

**Point:-**

6. The petition filed by the petitioner to appoint an Advocate Commissioner to note down the physical features, existence of bore wells and under earth pipe lines are irrigating the water to the plaintiffs other lands and to file his report with rough sketch.

7. The petitioner stated that he is the absolute owner of the suit property in S.No.13/3C, now sub divided as 13/3C1. The property obtained from his brother namely Veeraraghavalu Naidu. The said Veeraraghavalu Naidu laid under earth pipes to an extent of 2500 sq.feet for irrigation of water for all the lands mentioned in the S.No. 13/3C1 and bore well also dugged from him very long back and from that bore well 3 inch pipes were erected more than 6 feet under earth of his lands also through the lands of defendants and other land owners. The pipe line was erected to the consent all the land owners and also defendant's m other namely Anjiyammal. The petitioner also stated that his brother have already using the pipe line for more that 22 years and also got easement right. The petitioner also now using the said pipe line for cultivation of plants. The petitioner also stated that he dugged a bore well in land in S.No.9/6 for insufficient water already existing bore well for cultivation in the month of March 2017 and he linked the under earth pipes which is already exist and the plaintiff is using the both bore wells for irrigation of water to the lands. While so, the above said Anjiyammal who is land owner of S.No.13/1C under patta No.23 was died in the last month, who is non other than junior paternal aunt of the plaintiff, leaving behind the respondents No.1,2,4 are the sons and daughter of the said Anjiyammal.

The 3<sup>rd</sup> respondent is son of 1<sup>st</sup> defendant. The said Anjiyammal was given consent for erecting the under earth pipelines through her lands to the plaintiff's settler namely Veeraraghavalu. But, the said defendants have giving troubles to remove the under earth pipelines. For which the 1<sup>st</sup> defendant lodged a false complaint against the petitioner, his sons and his wife for alleging falsely threatening the 1<sup>st</sup> defendant when he was demanding for removal of pipelines.

8. The respondents herein filed their counter and stated that the defendants never given any consent to laid the pipe line. The plaintiff also agreed to remove the pipe lines after mediation of the villagers. But the petitioner not removed the said pipe line. The defendants want to plant the mango and coconut trees in the suit property and for which the defendants has to dig the earth up to four feet depth to cultivate the coconut plants. Hence, to equalization the land, the respondent have necessity to remove the pipe line in his land. The respondents also stated that in the settlement deed there was no any reveals about said pipe line. The petitioner also have new bore well in S.No.9/6 which is sufficient for water supply. The 4<sup>th</sup> respondent mother and Sorajammal purchased the S.No.13/1 to the extent of 6.38 acres from one Parasuraman Naidu on 25.11.1957 for valid consideration. According to the said Anchiammal and Sarojammal, they never executed any deed in favour of Plaintiff's and his brother Veeraraghavalu. The S.No.13/3C is the property owned by Anchiammal and Sarojammal. The well mentioned in the S.No.13/3C is not available in that field and others hand it is in the "Kosasthalai river bed". Hence, as per the petitioner contention that as if the bore dugged in S.No.13/3C and now sub divided

as S.No.13/3C1 is false and never such bore well available in the said survey number.

8. Hence, to decide the same it has to be proved only through oral and documentary evidence and also with appointing Advocate commission and survey commission.

9. This Court is of view that in the interest of justice, to provide the petitioner an opportunity to prove their case, to reduce much oral evidence and for proper adjudication of the case, an Advocate Commissioner has to be appointed. Mr. R. Rajeshwara Babu, Advocate is hereby appointed as an Advocate commissioner to visit the suit property and to note down the physical features, existence of bore wells and under earth pipe lines are irrigating the water to the plaintiffs other lands and to file his report with rough sketch. The Advocate Commissioner is directed to give prior notice to both parties about the date of inspection of the petition schedule mentioned property. The Remuneration for the Advocate Commissioner is fixed Rs.4000/-. The Remuneration will be paid after filing report. Call on 04.06.2021

Dictated to Steno - Typist and computerized by her directly, corrected and pronounced by me in open court, this the 8<sup>th</sup> day of April 2021.

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.

**Both side Witnesses & Exhibits:-**

-NIL-

Sd/- S. Kavipriya  
District Munsif,  
Tiruttani.