

**IN THE COURT OF DISTRICT MUNSIF, GUDIYATTAM,
VELLORE DISTRICT.**

Present: **Tr.K.Karthick Asath, B.A.,B.L.,(Hons),LLM.,**
District Munsif,
Gudiyattam.

Tuesday, this the 16th day of December 2025

E.A.01/2023

in

E.P. 23/2022

in

O.S.No. 157/2013

S. Balaraman

.... Petitioner/ D.Hr.

// Versus //

1. Kasi

2. K. Rajkumar

.... Respondents /J.Ds 1 and 2

This petition came up on 20.11.2025 before me for final hearing in the presence of Thiru.G.Ramachandran, Advocate for the Petitioner/D.Hr and Thiru.K.M.Boopathi, Advocate for the respondents/J.Ds. upon perusing the case records and having stood over for consideration till this day this court delivered the following.

Order

The application filed Under Order 26, Rule 9 and Section 151 of the Code of Civil Procedure for appointment of advocate commissioner directing him to note down the physical features in the suit property and suit pipeline, Channel and path by ploughing over the same with the help of Tractor and raising crops and to ascertain the damages and to file a report with plan in court to render justice and to pass such other orders.

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1. The averments of the petitioner in the applications:-

The petitioner is the petitioner/deed holder in EP.23/2022. The petitioner filed the above EP for contempt as the respondents and their agents deliberately disobeyed the decree. The petitioner further submit that Even after filing the above EP for contempt the respondents along with their said agents and henchmen again and again caused damages to the suit channel and pipeline by ploughing the land with the help of tractor over the pipeline and channel and there by caused damages to channel and pipeline and there by preventing him from raising crops in item Nos 1 and 3 of the suit property and the petitioner filed suit for damages also against the respondents in OS.No.41/2018 on the file of Subordinate Judge Court and the same is pending and even after that the respondent and resorting to violence and continuously causing damages to suit pipeline, channel and path way and hence to render justice an advocate commissioner has to be appointed directing him to notedown the physical features in the suit property and to note down the damages caused to suit pipeline, channel and path by ploughing the same over the same with the help of tractor and to raise crops and to file a report with plan in court to render justice.

2. The averments of the 1st respondent in the application:-

The respondent submits that it is utter false to state that these respondents have disobeyed the order of this court and they never prevented the petitioner taking water from the common well. The respondent also having 1/3rd share in well and service connection situated in Item No.4 of the schedule mentioned property is not at all in existence

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and not used by the petitioner. This Hon'ble court is already giving a finding to that effect. The pipeline was already in existence and at the time of arguments of both parties itself agreed that they can take the water from the well and connect to the existing pipeline already situated in the petitions land. Accordingly rough plan was filed by the petitioners counsel and based on mutual argument decree was passed. Now in order to take a new pipeline they are making false allegations.

3. Both side enquiry heard.

4. Point for consideration:-

Whether this application is liable to be allowed ?

5. Evidence:-

Neither of the parties to this application have adduced any oral or documentary evidence.

6. Discussion:-

On considering the submissions made by the both side counsels and perusing the available records this court delineate and proceeds its findings based on the following discussion.

6.1. The petitioner is the decree holder in OS.157/2013. The petitioner filed EP.23/2022 against the respondents and others. At present the petitioner filed this EA petition for appoint an advocate commissioner to note down the suit property and suit pipeline, channel and path to ascertain the damages. Per contra the respondents filed counter and stated

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they never prevented the petitioner taking walk from the common well. The pipeline was already exist and re exist in the petitioner land based on the rough plan and mutual agreement the decree was passed by this Hon'ble court. Hence prayed to dismiss the petition.

6.2. On perusing the petition the petitioner stated that the suit channel and pipeline was damaged by the respondents by ploughing land hence the petitioner already filed OS.41/2018 for damages before the Sub court, Gudiyatham. Hence prayed to appoint advocate commissioner to note down the physical features of the suit pipeline, channel and pathway for damages. On considering the present petition filed by the petitioner he himself stated that the channel and pipeline are damaged by the respondents for that he already filed suit in the year 2018 itself. On that the petition mentioned damages are happened before 2018 itself as well as before filing of the EP.23/2022. But the petitioner filed this petition to note down the damages after lapse of 7 years from the date of filing of the suit for damages. While the petitioner already filed suit for damages he cannot seek help of advocate commissioner for collecting evidence to prove the other suit for damages.

6.3. It is further submit that on perusing the decree passed in OS.157/2013 this court declare the right of petitioner to use pipeline for get the water from the item 2 of the schedule of property to item 1 and 3 of the suit property. In the decree there is no right given to the petitioner for use the channel and path through the respondents property. But in the present petition the petitioner seeks to note down the physical features of the

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pipeline, channel and path. The petitioner cannot seek more relief or claimed over the decree granted by this court. On considering the relief it is shows that the petitioner not approached this court with clean hands. The petitioner cannot use this petition to collect evidence in respect of non decreed rights. On considering the above discussion the petitioner failed to approach this court by showing sufficient cause for allowing this petition. Hence this court not inclined to allow this petition.

7. Result :-

As a result this petition is dismissed without cost.

Dictated to Steno typist directly, typed by him corrected and pronounced by me in the open Court on this the 16th day of December 2025.

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Petitioner side Witnesses & Exhibits :- Nil

Respondents side Witnesses and Exhibits :- Nil

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