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Rev.Appl.No.51 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

Rev.Appl.No.51 of 2018

and

CMP.No.5090 of 2018

1.Chinnaponnu
2.Gnanvadivel
3.Rajendran
4.Maniappan
5.Krishnan
6.Mani

... Applicants

Vs.

1.Lakshmi
2.Kannan
Respondents

...

Prayer: Review Appeal filed under Order 47 Rule 1 and 2 r/w 114 of the Code of Civil Procedure, against the order dated 11.12.2017 passed in S.A.No.652 of 2017 passed by this Court.

For Applicants : Mr.P.Rathanavel
for Mr.C.Mariappan



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Rev.Appl.No.51 of 2018

ORDER

This application has been filed seeking to review the judgment and decree passed by this Court in S.A.No.652 of 2017 dated 11.12.2017.

2. The learned counsel for the applicants submitted that the respondents herein claimed easement of necessity and existence of alternative pathway available for the respondents were not at all considered by this Court at the time of disposal of the Second Appeal.

3. The learned counsel for the applicants further submitted that the review petitioners were not offered with the opportunity to cross examine the Advocate Commissioner, who had submitted the report and plan before the Courts below.

4. It is settled law that the Review Application can be entertained by this Court only on the limited ground unless the applicant is able to show an error apparent on the face of the record, this Court can not exercise its review



Rev.Appl.No.51 of 2018

jurisdiction. In the case on hand, in para 9 of the judgment, this Court considered the availability of existence of alternative pathway pointed out by the defendants and rejected the same on the ground that the said pathway is on different heights or levels at different places and hence not fit for usage as pathway. In such circumstances, the submission made by the learned counsel for the review applicants as if the availability of alternative pathway has not been considered by this Court is not correct.

5. As far as the opportunity for cross examination of Advocate Commissioner is concerned, the review applicants could have filed an application for examination of Advocate Commissioner before the trial Court. When they failed to do so before trial Court, it is not open for them to argue in the Second Appeal that too in a review application that they were not afforded with an opportunity to cross examine the Advocate Commissioner. Therefore, the applicants have not made out any ground to review the judgment and decree passed by this Court on 11.12.2017.



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Rev.Appl.No.51 of 2018

S.SOUNTHAR, J.

dna

6. Accordingly, this Review Appeal is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

21.11.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

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