



*C.R.P.(MD).No.2048 of 2018*

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 05.12.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**CRP (PD)(MD) No.2048 of 2018 and**  
**CMP(MD) No.9038 of 2018**

1. Sekar,,

2. Dhanasekar,,

... Petitioners

**Vs**

1. Mayandi Nadar,,  
S/o.Kanthasamy Nadir, Vaagaivilai,  
Kelaramasamiyapuram (Po),  
Lakshmipuram Panchayat Board,  
Tiruchendur Tk,  
Thoothukudi District.

2. Vettrivel,,  
S/o.Mayandi Nadir, D.No.4/100,  
Vaagaivilai, Kelaramasamiyapuram (Po),  
Lakshmipuram Panchayat Board,  
Tiruchendur Tk,  
Thoothukudi District.

3. Ananthammal,,  
W/o.Vettrivel, D.No.4/100, Vaagaivilai,  
Kelaramasamiyapuram (Po),  
Lakshmipuram Panchayat Board,  
Tiruchendur Tk,  
Thoothukudi District.



*C.R.P.(MD).No.2048 of 2018*

4. Veeravel,,  
S/o.Vettrivel, D.No.4/100, Vaagaivilai,  
Kelaramasamiyapuram (Po), Lakshmipuram  
Panchayat Board,  
Tiruchendur Tk,  
Thoothukudi District.

5. Pillaiyan Kattalai, A/m.,  
Kariyamanikkam Perumal Kovil,  
Tirunelveli Town, (Rep Through its  
Executive Officer,  
(A/m. Subramaniaswamy Kovil Avani &  
Masi Mandagapadi).

... Respondents

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decree dated 18.06.2018 passed in IA No.99 of 2018 in O.S.No.28 of 2017 on the file of the District Munsif Court, Tiruchendur, Thoothukudi District.

For Petitioners :Mr.V.Rajiv Rufus

For Respondents : Mr.M.P.Senthil for R1 to R4

No appearance for R5

### **ORDER**

The revision is at the instance of the defendants 1 and 2 aggrieved by the appointment of Advocate Commissioner in the application taken out by the respondents/plaintiffs 1 to 4.



*C.R.P.(MD).No.2048 of 2018*

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2. The grievance of the revision petitioners is that the plaintiffs are attempting to fish for evidence by filing an application seeking appointment of advocate commissioner. The trial Court has allowed the application directing the commissioner to inspect the suit property and note down the physical features.

3. The learned counsel for the petitioners/defendants 1 and 2 would submit that even the third defendant, who is the competent person, has filed a counter stating that there is no pathway in existence as claimed by the plaintiffs. It is the case of the revision petitioners that the plaintiffs have an alternative pathway to reach their lands and there is no necessity for them to use the said land as a pathway.

4. The learned counsel for the respondents/plaintiffs, on the other hand, would submit that there is no infirmity in the order of the trial Court appointing a commissioner and in fact, the very request of the respondents/plaintiffs was that if the commissioner visits the property, the existence of an alternative pathway can be ascertained and that would put an end to the lis.



*C.R.P.(MD).No.2048 of 2018*

WEB COPY

5. Having heard the respective contentions of the learned counsel on either side and also after perusing the order of the trial Court, I do not find any infirmity or illegality in the order of the trial Court appointing a commissioner. The bone of contention between the parties is as to whether the plaintiffs have an alternative/existing pathway to reach their lands or as to whether as claimed by them, the said pathway is the only passage for reaching their lands. If the advocate commissioner inspects and files a report in this regard, the trial Court would certainly have an advantage to decide the issues and adjudicate the suit and no prejudice would be caused to the revision petitioners by this exercise, as the only point for adjudication, is as to the existence of the pathway and an alternative pathway, as claimed by the revision petitioners. Therefore, I do not find any merit in this revision.

6. Accordingly, this civil revision petition is dismissed with a direction to the trial Court to issue a warrant to the advocate commissioner specifically to note the physical features with regard to the alleged suit pathway existing and also whether any alternate pathway is



*C.R.P.(MD).No.2048 of 2018*

WEB COPY

available to the plaintiffs to reach their suit land. The commissioner shall inspect the property in the presence of all the parties to the suit, after giving reasonable prior notice and file a report before the trial Court. It is open to the parties to give necessary memo of instructions to the Advocate Commissioner. On receipt of the report, the trial Court shall proceed with the suit in accordance with law and considering the fact that the suit is of the year 2013, the trial Court shall endeavour to dispose of the suit on merits within a period of six months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

**05.12.2023**

NCC : Yes/No  
Index : Yes/No  
RR

To  
1.The District Munsif Court,  
Tiruchendur, Thoothukudi District.

2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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*C.R.P.(MD).No.2048 of 2018*

**P.B.BALAJI, J.**

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**CRP(PD) (MD) No.2048 of 2018**

**05.12.2023**