



C.R.P. (MD) No. 219 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.07.2024

CORAM

**THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

C.R.P. (MD) No. 219 of 2022

and

C.M.P. (MD) No. 982 of 2022

Ayyanar

... Petitioner/

Plaintiff

-VS-

1.Palanichamy

2.The Tahsildar,  
Office of the Tahsildar,  
Mudangiyar Road,  
Rajapalayam Town,  
Virudhunagar District.

3.The District Collector,  
Virudhunagar District,  
Collectorate Complex,  
Virudhunagar.

... Respondents/  
Defendants

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records pertaining to I.A.No.2 of 2019 in O.S.No.266 of 2019 on the file of the District Munsif Court, Rajapalayam, dated 23.11.2021 and set aside the same.



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For Petitioner : Mr.M.Ashok Kumar  
For Respondent : Mr.M.Thirunavukarasu for R1  
Mr.SRA.Ramachandran,  
Addl. Government Pleader for R2 & R3

### **ORDER**

The Civil Revision Petition is filed aggrieved by the order dated 23.11.2021 in I.A.No.2 of 2019 in O.S.No.266 of 2019 on the file of the District Munsif Court, Rajapalayam.

2. The plaint is filed with a prayer to declare that the suit schedule property being the 'Grama Natham' is used as a common pathway and consequently, the defendants should not interfere with the usage of the said common pathway and consequently to remove the encroachment made by the defendants by way of putting up the house and compound wall.

3. The suit is resisted by the defendant by stating that when the plaint states that the suit is filed by in the representative capacity, no other person from the village has consented or joined the plaintiff. The case of the defendant is that it is the exclusive property and the defendant has put up his house and is living there, and no common pathway exists. In that backdrop, the present



interlocutory application is filed to appoint an Advocate Commissioner to visit the property and to measure the same and to file a report with the help of a surveyor. The Trial Court rejected the application on the ground that since the dispute does not relate to any boundary dispute or physical features and it relates to the existence of the pathway or not, no Advocate Commissioner is necessary. Aggrieved by the same, the present Civil Revision Petition is filed before this Court.

4. Mr.M.Ashok Kumar, the learned Counsel appearing on behalf of the petitioner would submit that firstly, in this case, the existence of the pathway, its nature and how it leads to the lands of the plaintiff as well as the lands of the other villagers can be known if only an Advocate Commissioner makes a local inspection and draws up a plan. The defendant will not be put to any prejudice by the mere fact if the Advocate Commissioner inspecting the property and locating where his constructions are and how the pathway exists.

5. Per Contra, the learned Counsel appearing on behalf of the respondent would submit that this is a case where the entire land belongs to the defendant. The plaintiff is only filing a suit to wreck vengeance on the defendant and there is no right which is established. He would submit that there is absolutely no any



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boundary dispute so as to appoint the Advocate Commissioner.

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6. I have considered the rival submissions made and perused the material records of the case. On a perusal of the plaint, it can be seen that the averments made in paragraph (3) are a little general in nature. If the plaintiff claims that there exists a common pathway, the plaintiff can always summon the revenue records and establish that the particular sub-division/survey number is a common pathway and therefore, the defendant cannot encroach upon the same and on the basis the plaintiff's suit can be decreed. If the plaintiff claims that it is the defendant's property, however, by virtue of long and continuous use, the easementary right has accrued to the plaintiff and others, even in that case such evidence has to be produced by the plaintiff and that can be considered by the Court. Either way, inspection of the Commissioner or filing a report will not be of any relevance to the *lis* given the nature of the case.

7. Accordingly, finding no merits, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No Costs.

**12.07.2024**

NCC : No



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To

1. The District Munsif Court, Rajapalayam.
2. The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court, Madurai.



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**D.BHARATHA CHAKRAVARTHY, J.**

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