



C.R.P.(PD)No.517 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2025

CORAM:

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

C.R.P.(PD)No.517 of 2025

and

C.M.P.No.2920 of 2025

1.D.Jayanthi
2.D.Sumathi
3.D.Induja

...petitioners

-Vs-

1.Ramasamy
2.Marimuthu
3.Lakshmanan

... Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, against the fair and decreetal order made in I.A.No.23 of 2024 in O.S.No.100 of 2018 on the file of the District Munsif Judge, Palladam, dated 29.10.2024.

For petitioners : Mr.V.P.Sengottuvel,
Senior Counsel
For Mr.C.Elamurugan



C.R.P.(PD)No.517 of 2025

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ORDER

The plaintiffs are the revision petitioners before this Court challenging the order appointing an Advocate Commissioner in I.A.No.23 of 2024 in O.S.No.100 of 2018 by the District Munsif, Palladam. The parties are referred to in the same ranking as before the trial Court.

2. The brief facts are set out below:

The plaintiffs have filed a suit in O.S. No. 100 of 2018 before the District Munsif, Palladam, seeking an injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The suit pertains to property comprised in S. No. 58/2B, measuring an extent of 10.96 acres out of a total extent of 14.86 acres, within four boundaries, together with a well in S. No. 58/2A in K. Ayyampalayam Village, Palladam Taluk.

3. The issue relates to whether a cart track exists in the petitioner's property, which is used by the defendants exists in the property of the



C.R.P.(PD)No.517 of 2025

plaintiff.

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4. Defendants 1 to 3 have filed a written statement asserting that S.F. No. 258/2, measuring 22.2.25 acres in Ayyampalayam Village, Palladam, is situated east of the North-South public road. The third defendant's father, Chinna Ramasamy Gounder, purchased 7.39 acres in the said land and an extent of 1.73 acres in S.F. No. 58/3 from one Gurusamy Naicker and his sons under a registered sale deed dated 12.07.1962. In the sale deed, it is clearly mentioned that the purchaser was granted an easementary right of way in the western portion of the property of Lakshmana Chettiyar and Nachimuthu Chettiyar for taking vehicles, cattle, etc., as well as the property of Krishnasamy Naidu located south of S. No. 58/2.

5. The first plaintiff is the daughter-in-law of Krishnasamy Naidu, and plaintiffs 2 and 3 are his granddaughters. In the exchange dated 13.09.2023 between Lakshmana Chettiar, Narayanasamy Naidu and Gurusamy Naidu, the defendants claimed a right to the cart track and also filed a counterclaim, seeking a declaration that they are jointly entitled to



C.R.P.(PD)No.517 of 2025

enjoy the cart track along with the plaintiffs.

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6. A reply statement was filed by the plaintiffs denying the counterclaim. They contended that the defendants had no access through the suit property and that the cart track was situated in S. No. 371, Anupatty Village, Palladam. Therefore, they argued that the defendants had no right to the cart track as alleged by them.

7. Defendants 1 to 3 filed I.A. No. 23 of 2013 in the said suit, seeking the appointment of an Advocate Commissioner to inspect and record the physical features of Item Nos. 1 and 2 and to measure Item No. 2 with the assistance of the Taluk Surveyor. In the affidavit filed in support of the said application, the defendants submitted that in their written statement, they had clearly stated that they had the right of a cart track only through S.F. No. 371, Anupatty Village, Palladam. The respondents denied this right of the petitioners and asserted that no such cart track existed. Therefore, the defendants sought the appointment of an Advocate Commissioner.



C.R.P.(PD)No.517 of 2025

WEB COPY

8. This application was opposed by the plaintiffs, contending, inter alia, that in the property allotted to them, there was no mention of a cart track in survey and field Nos. 58/2A and 58/283. They further submitted that the defendants had never exercised any cart track rights, and the entire claim was baseless. The very existence of the contract was in question.

9. The learned District Judge, Palladam, after considering the arguments and records, allowed the application and appointed an Advocate Commissioner. Challenging the same, the petitioners have approached this Court.

10. Heard the learned counsel, Mr. V.P. Sengottuvel, Senior Counsel, appearing on behalf of Mr. Elamurugan.

11. The defendants, in their counterclaim, asserted a right to the cart track, which was denied by the plaintiffs. The plaintiff have also stated that the defendants enjoy an alternative cart track and, therefore,



C.R.P.(PD)No.517 of 2025

could not claim a right to the suit cart tract. The learned District Munsif considered the rival submissions and observed that the documents filed by the plaintiffs described the cart track. The existence of this cart track in Item No. II of the petition-mentioned property could only be determined after inspecting the property and reviewing oral and documentary evidence. The learned Judge also observed that no prejudice would be caused to either party. The learned counsel for the petitioners/plaintiffs submitted that the present application was merely an attempt to gather evidence.

12. Considering that one party claims the existence of a cart track while the other denies it, appointing an Advocate Commissioner to note the physical features would be in the interest of justice and would aid the Court in arriving at a conclusion. Since no prejudice would be caused to the petitioners, I see no reason to interfere with the order passed by the learned District Judge, Palladam.

13. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected C.M.P. is closed.



C.R.P.(PD)No.517 of 2025

13.02.2025

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nvi

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To

The District Munsif Judge, Palladam.



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C.R.P.(PD)No.517 of 2025

P.T.ASHA,J.,

nvi

C.R.P.(PD)No.517 of 2025 and
C.M.P.No.2920 of 2025



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C.R.P.(PD)No.517 of 2025

13.02.2025