

C.R.P.No.296 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.296 of 2025
C.M.P.No.1918 of 2025

1.Gangeyan

2.Dheenadhayalan

3.Lakshmi

4.Indira

...Petitioners

Vs

1.Periyagounder

2.P.Murugesan

3.Kandhasamy

4.K.Jeyaraj

5.P.Loganathan

6.Pappathi

7.L.Sathyamoorthi

8.L.Govindaraj

...Respondents



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PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the Fair and Decretal order dated 13.09.2024 made in I.A.No.6 of 2023 in O.S.No.174 of 2016 on the file of the District Munsif Court, Tiruchengode, by allowing this Civil Revision Petition.

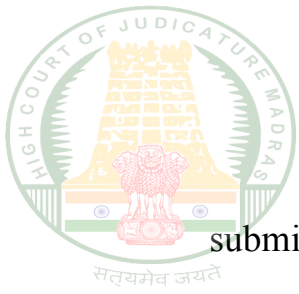
For Petitioners : Mr.N.S.Suganthan
For Respondents :R1 to R8 – Served
(No Appearance)

ORDER

Challenging the dismissal of their application for appointing an Advocate Commissioner for noting down the physical features of the suit schedule property, the defendants 5 to 9 are the revision petitioners before this Court.

2.The facts which have given rise to this revision is herein below set out and the parties are referred to in the same ranking as before the District Munsif Court, Tiruchengode.

The plaintiffs had filed the suit O.S.No.174 of 2016 on the file of the above Court for a mandatory injunction directing the defendants to restore the suit A, B, C, D, E, F cart track to its position status quo ante and which is detailed in the plaint rough plan. The plaintiffs would



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submit that they are absolute owners of item No.1 of the suit property through inheritance. The father of the plaintiffs 1 and 3, Muthu Gounder, son of Athiyappa Gounder had purchased the same under a registered sale deed dated 12.03.1970 from the first defendant and his father Palaniappa Gounder. He has been in possession and enjoyment of the same till his demise. After the demise of Muthu Gounder, the plaintiffs had inherited the suit property of which they are in possession and enjoyment. The first item of property consists of agricultural lands and the plaintiffs are cultivating the same by raising seasonal crops like Cholan, Groundnut, Tapioca etc.,. The plaintiffs would submit that the revenue records for item No.1 stood in the name of the plaintiffs 1 and 3. The defendants 1 to 4 are the owners of the land in Survey No.12/9 of 53 Pudhupalayam Village. Item No.2 of the suit schedule property is a cart track which branches from east-west tar road connecting Chinnathambipalayam to Kozhikalnatham main road on the northern side. It runs on the eastern side of Survey No.12/9 and Survey No.30/1 in a north-south direction. The breadth of this pathway is 6 cubit and the same reaches the plaintiff's land which is the first item of suit property. In the rough plan filed along with the plaint, the said pathway has been described as "ABCDEF". The petitioner would submit that except for this cart track they have no other



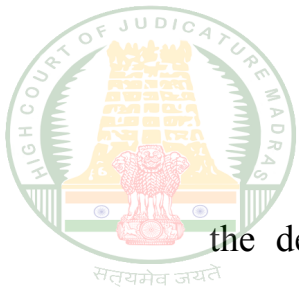
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access to their property.

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3.The plaintiffs would submit that the right of user and enjoyment of item No.2 to suit cart track had been granted to the plaintiffs 1 and 3 by the first defendant and his father Palaniappa Gounder under the sale deed dated 12.03.1970. In the documents prior to this namely the partition deeds dated 09.06.1964 and 11.06.1964, there is a mention to this cart track. In fact, the partition deed is one that has been entered into between the first defendant and the other co-owners of the lands in S.Nos.12 and 30/1. The item No.2 suit cart track was set apart for the common and beneficial enjoyment of the lands that had been partitioned. Therefore, while selling the first item of property, plaintiff's father was granted the right of user and enjoyment to Item No.2 suit cart track. Therefore, the plaintiff would submit that they are entitled to use the cart track.

4.While so, in the month of January 2015, the defendants have levelled their land and they had obliterated cart track in their land bearing No.30/1. The plaintiff's contention is that this right to use the cart track has been given to them under a document which has been obliterated by



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the defendants. Therefore, they have come forward with the suit in question.

5.The sixth defendant had filed a written statement which is adopted by defendants 5 and 7. They had submitted that there is no cart track in existence on ground in S.No.12/9. They had denied the various allegations contained in the suit. They would submit that neither they nor their predecessor entitled are parties to the two partition deeds and therefore plaintiffs cannot draw strength from a boundary mentioned in the said deed. They sought for the dismissal of the application.

6.Pending suit, the defendants 5 to 9 filed I.A.No.6 of 2023 to appoint an Advocate Commissioner to note down the physical features of the suit properties. It is their contention that the plaintiffs have an alternate road running from Tiruchengode to Kolikolnatham Road which reaches to the lands of plaintiffs 1 to 4. They would further contend that there is no pathway in existence. The only reason given for appointing the Advocate Commissioner is that the appointment of Advocate Commissioner would reduce and minimise the oral and document evidence let in by both parties. This application was resisted by the



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plaintiffs who filed a counter denying the existence of alternate pathway.

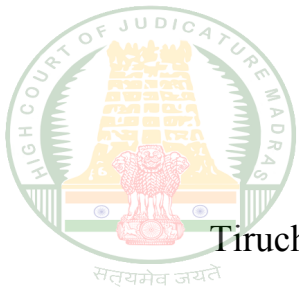
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The plaintiffs have clearly stated that their very case is that the suit cart track has been obliterated and is running in the eastern extremity of S.No.30/1 on the date of the filing of the suit itself that is shown as “C, D, E, F”. The cart track which has been obliterated is shown as “A,B,C,D”. The application for appointment of an Advocate Commissioner has not been expressly stayed. Therefore, they sought for the dismissal of the application.

7.The learned Additional District Munsif dismissed the application contending that the existence of the cart track can be deciphered from the documents as the plaintiffs are claiming right only on the basis of documents and the statement made by the defendants 5 to 9 themselves. Therefore, there was no necessity to appoint an Advocate Commissioner. It is challenging this order that defendants 5 to 9 are before this Court.

8.Heard the learned counsel for the petitioner and perused the records.

9.The reasoning given by the learned District Munsif,



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Tiruchengode is absolutely correct. The plaintiffs had come to Court

claiming a right of easement by grant and not an easement of necessity.

Therefore, a perusal of the documents would prove as to whether there existed a cart track or not. Thereafter, the case of both the parties can be considered. There is no necessity for appointing Advocate Commissioner to note down the physical features and that too only on the ground that it would reduce the evidence to be submitted to Court. Therefore, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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To

The District Munsif Court, Tiruchengode,



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