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C.R.P.(PD)No.5227 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(PD)No.5227 of 2024 and
CMP.No.29218 of 2024**

1. Leelavathi
2. Sakthivel

....

Petitioners

..Vs..

1. Naatudurai
2. Palanaathal
3. Thangamuthu
4. Subramani@ Balasubramaniyan
5. Muthurathinam

....

Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order 03.04.2024 made in I.A.No.1730 of 2022 in O.S.No.380 of 2015 on the file of learned District Munsif Court, Dharapuram, by allowing this civil revision petition.

For Petitioner : Mr.N.Ponraj



C.R.P.(PD)No.5227 of 2024

ORDER

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This civil revision petition arises against the order of the learned District Munsif Court, Dharapuram in I.A.No.1730 of 2022 in O.S.No.380 of 2015 dated 03.04.2024.

2. The civil revision petitioners are the defendants in the suit.

3. For the sake of convenience, the parties shall be referred to as their ranks in the suit.

4. The plaintiffs filed O.S.No.380 of 2015, seeking a decree of permanent injunction to restrain the defendants from interfering with the peaceful possession and enjoyment of the suit pathway measuring 22 ft x 25 ft. According to them, this is a customary pathway, which enables the plaintiffs to reach their property.

5. Summons were served on the defendants. The 2nd defendant filed a detailed written statement. According to him this is a not customary pathway for the plaintiffs and that the plaintiffs have an alternate pathway through the adjacent lands.



C.R.P.(PD)No.5227 of 2024

6. As the dispute over the existence of the pathway had arisen, the learned District Munsif at Dharmapuram appointed an Advocate Commissioner to visit the suit schedule mentioned property and to submit a report. The Advocate Commissioner, who so visited the property, was obstructed by the respondents 3 to 5, herein. According to them, the property, which has been shown as an alternate pathway by the defendants, belongs to them absolutely and neither the plaintiffs nor the defendants have right over the same. Recording these obstructions, the learned Advocate Commissioner filed a report before the Court seeking for police protection. Unfortunately, the Advocate Commissioner passed on.

7. This constrained the filing of I.A.No.970 of 2022, seeking for re-issuance of the warrant to a fresh commissioner as the original Advocate appointed as a Commissioner had passed on. To this application, the plaintiffs filed a counter that, in case, the defendants require reissuance, they should implead the respondents 2 to 5 as parties to the suit. Taking inspiration from this counter, the defendants filed an application in I.A.No.1730 of 2022 to implead the respondents 2 to 5 herein as a parties to the suit. The plaintiffs filed a counter.



C.R.P.(PD)No.5227 of 2024

WEB COPY

8. The learned Trial Judge who dealt with the application dismissed the same. Hence, this revision.

9. I heard Mr.Ponraj for the civil revision petitioner.

10. Mr.N.Ponraj, refers to me to the counter affidavit filed by the plaintiffs in I.A.No.970 of 2022, as well as interim report filed by the original Advocate Commissioner. He points out from these two documents that when the Advocate Commissioner wanted to execute the warrant, he was prevented by the respondents 2 to 5 herein and therefore they are necessary, if not proper, parties to the suit.

11. I have carefully considered the submissions of Mr.Ponraj. I have also gone the records.

12. Necessary parties are one, without whose presence the Court cannot pass an effective decree. The plaintiffs have come forward with the suit, pleading that customary pathway, which is in their enjoyment is being obstructed by the defendants. The defendants have set up a plea



of alternate pathway. The proposed parties/respondents 2 to 5 have prevented the inspection by the Advocate Commissioner on the ground that alternate pathway shown by the defendants is not a pathway of either the plaintiffs or the defendants, but one set apart for their use. I should add here that the defendants have not filed a counter claim as against the plaintiffs in the suit. They have also not filed a separate suit against the respondents 2 to 5 pleading that the pathway which runs over their property is a common pathway for the enjoyment of the defendants and the plaintiffs in this suit. The respondents 2 to 5 herein are entitled to maintain their case that the pathway is exclusively theirs and neither the plaintiffs nor the defendants have any right over it. If they are to be impleaded as party to the suit, it will be expanding the scope of the suit than it was originally presented.

13. Furthermore, the plaintiffs are *dominus litis*. It is for them to pick and choose the persons against whom they want to litigate before a Court. The plaintiffs' clear case is that usage of the customary pathway was prevented by the defendants alone. They have not pleaded any cause of action as against the respondents 2 to 5. If they were to be impleaded it would embarrass the Trial in the suit.



C.R.P.(PD)No.5227 of 2024

14. In the light of the above observations, I do not find reason to entertain with the revision.

15. At this stage Mr.Ponraj, points out that I.A.No.970 of 2022 is still pending consideration before the learned District Munsif at Dharapuram. The defendants had been constrained to file the said petition, on account of the fact that the previous Advocate Commissioner had passed on. The learned District Munsif, Dharapuram shall dispose I.A.No.970 of 2022, within a period of *eight weeks* from the date of receipt of a copy of this order.

With the above observations, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.01.2025

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The District Munsif Court, Dharapuram



C.R.P.(PD)No.5227 of 2024



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C.R.P.(PD)No.5227 of 2024

V. LAKSHMINARAYANAN,J.

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C.R.P.(PD)No.5227 of 2024



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C.R.P.(PD)No.5227 of 2024

08.01.2025