



C.R.P(MD)No.496 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.02.2025**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.496 of 2025

and

C.M.P(MD)No.2773 of 2025

Vijaya Kumar

... Petitioner/Petitioner/
Appellant

Vs.

Prasanna Kumari

... Respondent/ Respondent/
Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2024 in A.S.No.20 of 2024, dated 20.11.2024 on the file of Principal Subordinate Court, Nagercoil.

For Petitioner : Mr.S.C.Herold Singh

ORDER

The appellant/defendant in A.S.No.20 of 2024 on the file of Principal Subordinate Court, Nagercoil is the revision petitioner herein.



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2. The respondent herein as plaintiff has filed the above said suit for the relief of permanent injunction restraining the defendant from in any way interfering with the peaceful possession and enjoyment of the plaint schedule property. Pending suit, the defendant had filed a counter claim seeking a declaration of his easementary right and to recovery of possession over 'B' schedule property. The defendant has further prayed for mandatory injunction for removal of certain constructions put up by the plaintiff. The defendant has further prayed for a permanent injunction restraining the plaintiff from disturbing with the peaceful possession and enjoyment of the defendant over the 'B' schedule property. The trial Court after considering the oral and documentary evidence submitted on either side, has proceeded to decree the suit and dismiss the counter claim. Challenging the same, the defendant had filed A.S.No.20 of 2024 before Principal Sub Court, Nagercoil. Pending appeal, the defendant had filed I.A.No.1 of 2024 for appointment of Advocate Commissioner for the purposes of noting down the physical features of the property. The said application has been dismissed by the first appellate Court. Challenging the same, the present revision petition has been filed.



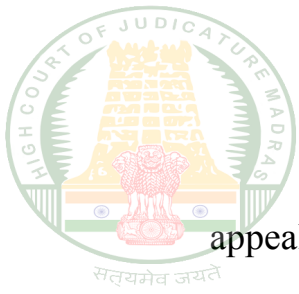
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3. According to the learned counsel appearing for the revision petitioner, the defendant in the suit is entitled to light and air from the property belonging to the plaintiff and they have been enjoying the light and air for more than 20 years. Hence, he had prayed for declaration of his easementary right. In the year 2018, the plaintiff has put up certain constructions in the disputed area and therefore, filed a suit for permanent injunction. This has prompted the defendant to seek for counter claim, claiming easementary right as well as for removal of those constructions. Unless a Commissioner is appointed to note down the physical features, the said aspects cannot be proved before the first appellate Court.

4. I have carefully considered the submissions made by the learned counsel for the revision petitioner and perused the material records.

5. A perusal of the grounds of first appeal clearly reveal that the defendant has attacked the judgment and decree of the trial Court on various grounds. However, the ground raised by the defendant in the first



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appeal do not call for appointment of an Advocate Commissioner.

Considering the fact that the defendant has not chosen to make any such application before the trial Court, especially after filing a counter claim, he will not be entitled to file such an application before the first appellate Court. There are no merits in the case.

6. Hence, this Civil Revision Petition stands dismissed. No costs.

Consequently, connected Civil Miscellaneous Petition is closed.

24.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Principal Subordinate Court,
Nagercoil.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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