



C.R.P.(PD)(MD).No.1823 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.1823 of 2022
and CMP(MD).No.8207 of 2022

1.Rajagopal (died) ...Petitioner/Petitioner/Appellant
/1st Defendant

2.Savithri

3.Nisha

4.Ram Nishand

... Legal heirs of deceased
1st petitioner

(Petitioners 2 to 4 are brought on record
as LR's of the deceased sole petitioner
vide order dated 06.02.2025)

-VS-

1.Krishnan

....1st Respondent/1st Respondent
/1st Respondent/Plaintiff

2.Vijayaragavan

.... 2nd Respondent/2nd Respondent
/2nd Respondent/2nd Defendant

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.07.2022 passed in I.A.No.1 of 2019 in A.S.No.9 of 2018 on the file of the II Additional Subordinate Court, Nagercoil and allow the present civil



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revision petition.

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For Petitioners : Mr.R.J.Karthick
For Respondents : Mr.S.Palanivelayutham for R1
: No appearance for R2

ORDER

The first defendant in O.S.No.67 of 2014 on the file of the Principal District Munsif Court, Nagercoil, Kanyakumari is the revision petitioner.

2.The first respondent in the revision petition as plaintiff has filed the above said suit for the relief of declaration that he has got a right of easement by prescription over 'B' schedule pathway. The plaintiff has further prayed for a permanent injunction restraining the defendants from blocking or altering the nature of 'B' schedule pathway and denying the pathway right of the plaintiff over 'B' schedule pathway. The plaintiff has further prayed for a mandatory injunction as against the first defendant to remove the granite wall which obstructs the plaintiff 'B' schedule pathway.

3.The defendants in their written statement have contended that 'B' schedule property is their private property and there is no pathway at



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all. They have further contended that the plaintiff do not have any right of easement over 'B' schedule pathway.

4.The trial Court after considering the oral and documentary evidence has decreed the suit as prayed for. Challenging the same, the defendants had filed A.S.No.9 of 2018 before the II Additional Subordinate Court, Nagercoil.

5.Pending appeal, the defendant/appellant had filed I.A.No.1 of 2019 for appointment of an Advocate Commissioner to inspect the suit property to find out the existence of 'B' schedule property. This application was resisted by the plaintiff contending that is a vexatious application and the defendant is attempting to bring in new evidence. The Appellate Court had dismissed the said application on the ground that when the pathway has been blocked in the year 2014, no purpose would be served in appointing an advocate commissioner in the year 2022 to find out the existence of the pathway. The said order is put to challenge in the present civil revision petition.

6.According to the learned counsel for the petitioner, the trial Court in Paragraph No.12 of the judgment had shifted the burden upon the defendants to establish the fact that there is no other pathway for the



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plaintiff and therefore, they are constrained to file such an application before the First Appellate Court.

7.Per contra, the learned counsel for the respondents had contended that the trial Court after considering the oral and documentary evidence has arrived at a finding that 'B' Schedule property is a pathway and the plaintiff is having easementary right over the said pathway. Therefore, the appointment of the advocate commissioner is not necessary.

8.I have considered the submissions made on either side and perused the material records.

9.From the prayer sought for in the plaint, it could be found that the plaintiff admits title of the defendants over 'B' schedule property and claims right of easement by prescription to use a pathway in the said property. In such circumstances, the entire burden would be upon the plaintiff to establish that 'B' schedule property is a pathway and they are having right of easement by prescription over the said pathway. In such circumstances, the appointment of the advocate commissioner will not be of any assistance to the First Appellate Court. Therefore, there are no merits in the civil revision petition.



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10. With the above said observations, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2025

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

To

1. The II Additional Subordinate Judge, Nagercoil
2. The Principal District Munsif, Nagercoil, Kanyakumari
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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