



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

THE HON'BLE Mr.JUSTICE K.KUMARESH BABU

CRP No. 3484 of 2022

AND

CMP No.18551 of 2022

1. R.Poongothai
2. S.Saranya
3. P.Rangasamy

..Petitioner(s)

Vs

1. R.Thangavel
2. Rajasekar
3. R.Somasundaram
4. S.Ranjithkumar

..Respondent(s)

Civil Revision Petition filed under Article 227 of the Constitution of India praying to pass an order to set aside the fair and final order dated 18.07.2022 made in I.A.No.1 of 2021 in O.S.No.207/2018 on the file of the Sub Court, Paramathi.

For Petitioner(s):

Ms.Aishwarya
for M/s.Sarvabhauman Associates

For RR1 & 2 :

Mr.R.Vivek

For R3:

No appearance

For R4:

Not ready in notice



ORDER

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This Civil Revision Petition had been filed challenging the order dated 18.07.2022 passed in I.A.No.1 of 2021 in O.S.No.207 of 2018 on the file of the Sub Court, Paramathi.

2.Heard Ms.Aishwarya, learned counsel for the petitioners and Mr.R.Vivek, learned counsel for the respondents 1 and 2 and perused the materials available on record.

3.The learned counsel for the petitioners would submit that the petitioners have instituted a suit for declaration of easementary rights of the suit schedule pathway and that during the pendency of the suit, the respondents, taking advantage of the vacation, have obliterated the path and carried on agricultural activities, thereby preventing the petitioner from enjoying the easementary rights which had been hitherto enjoyed. Hence, it had become necessary to seek for a mandatory injunction also to restore the suit. At that juncture, it was also found that there had been some errors crept in the plaint, where the suit property running North to South on the Western side had been described as a pathway running on the Northern side from East to West. In that circumstances, it had also become necessary to carry out the amendment to the pleadings in the plaint in respect of describing the suit property correctly and also for a mandatory



injunction to restore the suit pathway. It is submitted that the trial Court, without appreciating the facts of the case, had dismissed the application which would cause severe prejudice to the petitioners in prosecuting their suit. Hence, he seeks indulgence of this Court.

4. Countering his argument, the learned counsel for the respondents 1 and 2 would submit that originally, in the plaint, the petitioners have described the property to be a pathway situate on the Northern side of the property running from East to West. The same was resisted by filing a written statement indicating that there has been no pathway whatsoever used by anyone, muchless the petitioners. He would further submit that an Advocate Commissioner was appointed by the Court and he had also submitted a report along with the sketch, which also do not indicate the existence of any pathway in the suit survey number properties. In fact, he had specifically indicated that there is a different metal road, which runs adjacent to the property of the 2nd respondent. He would further submit that if the case of the petitioners for amendment is allowed, it would give rise to a new suit for a different cause of action, which also cannot be permitted and hence, the trial Court has rightly rejected the claim made by the petitioners. Hence, he seeks dismissal of this revision.

5. I have considered the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.



6.The claim for an amendment in the plaint, particularly, the averments with regard to the description of the property in the plaint, as rightly pointed out by the learned counsel for the respondents would amount to modifying the suit to a new suit on a different cause of action. Having specifically pleaded that the suit pathway was situated on the northern side of the suit schedule property running East to West and had also let in evidence on the same strength, no reasons have been attributed by the petitioners to substantiate their claim for the amendment. Further, the Court had also placed reliance on Ex.C1 and Ex.C2 viz., the report of the Advocate Commissioner and also the sketch to reject the interlocutory application.

7.This Court is refraining itself from making any observation on the findings with regard to the report of the Advocate Commissioner, as the petitioner always have a right to call upon the Advocate Commissioner to cross examine and in that aspect, this Court also holds that the findings on the interlocutory application shall not prejudice the Court while deciding the suit finally. Similarly, to substantiate that there has been an obliteration of the pathway, during the pendency of the suit, except to make a bald averment, the respondent has not produced any document whatsoever, he had not even made an averment, as to what steps have been taken as regards to the obliteration of pathway claimed.



8. For the aforesaid reasons, I do not find any necessity to interfere with the orders passed and accordingly, this Civil Revision Petition stands dismissed.

No costs. Connected C.M.P. is closed.

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Index: Yes/No

Neutral Citation: Yes/No

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