



C.R.P.(PD)(MD)No.1537 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 30.06.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)(MD)No.1537 of 2023

and

C.M.P.(MD)No.7575 of 2023

1.Mariya Joseph

2.Micheal

... Petitioners

Vs

1.Packiya Nathan

2.Gnanaraj

3.John Micheal

4.Peter Dharmaraj

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.02.2023 in I.A.No.1 of 2022 in O.S.No.4 of 2022 on the file of the Additional District Munsif Court, Ambasamudharam.

For Petitioners : Mr.A.Balakrishnan

For Respondents : Mr.P.P.Alwin Balan for R1 to R4



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ORDER

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This Civil Revision Petition has been filed challenging the order passed by the trial Court dismissing the application filed by the petitioners seeking appointment of Advocate Commissioner to inspect the suit property along with surveyor and file a report.

2. The petitioners herein filed a suit seeking declaration that suit 3rd schedule property is a common pathway belonged to the plaintiffs and the defendants and for a consequential mandatory injunction directing the 4th respondent to remove the fence put up by him in 3rd schedule property so as to restrict the free access of the plaintiffs.

3. It is the case of the plaintiffs that the suit property originally belonged to Antony Nadar and the male heirs of Antony Nadar are shown as defendants. Even during the life time of Antony Nadar, there was a partition in the suit properties among the male heirs of Antony Nadar orally on 31.05.1990. In the said partition, Antony Nadar retained 38 cents on Eastern side and remaining property on the western side was divided among the defendants with an extent of 30 cents each. In order to facilitate access to common pathway on the eastern side at the



time of partition, the defendants formed a pathway on the Southern side of their respective shares with the width of three meters. The said pathway on the Southern side has been shown as 3rd schedule property. The petitioners/plaintiffs purchased the share of defendants 2 and 3. The 4th respondent approached the plaintiffs and requested them to sell the property purchased by them in his favour. The plaintiffs were not willing to sell the property purchased by them in favour of 4th respondent. Aggrieved by the same, 4th respondent created obstruction in the suit pathway described in the 3rd schedule. In view of the same, the suit was filed seeking declaration of common right over the 3rd schedule pathway and for removal of obstruction created by the 4th defendant.

4. The defendants filed a written statement wherein they denied the partition of the suit properties even during the life time of Antony Nadar. The defendants specifically denied the existence of suit pathway in the 3rd schedule property. The formation of 3rd schedule property and the plaintiffs' user and enjoyment of the same were also denied in the written statement. The defendants further claimed that at the time of partition among four brothers, they formed a common pathway on the Northern side of the property and according to the



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defendants, there is no pathway on the Southern side as claimed by the plaintiffs. With these pleadings, the defendants sought dismissal of the suit.

5. A perusal of the plaint and written statement would indicate that the main controversy involved in this lis is relating to existence of pathway in the 3rd schedule property and the entitlement of the plaintiffs to use the same. The trial Court dismissed the application filed by the petitioners seeking appointment of advocate commissioner mainly on the ground that there was no reference about the existence of pathway in the sale deed in favour of the plaintiffs. As per the plaint averment, the suit pathway was formed at the time of oral partition among the sons of Antony Nadar. Therefore, for formation of suit pathway, there will not be any documentary evidence. The non-mentioning of the suit pathway in the sale deed in favour of the plaintiffs can be considered at the time of final disposal of the suit.

6. As per the pleadings, there is a serious controversy with regard to the existence of pathway in the suit 3rd schedule property. The best evidence to decide the existence or otherwise of the suit pathway in



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the 3rd schedule property is the report of the Advocate Commissioner.

The report of the Advocate Commissioner will certainly help the Court to decide the lis and the controversy involved in the suit in a most satisfactory way. Therefore, this Court feels that the appointment of Advocate Commissioner is absolutely necessary to decide the controversy involved in the lis.

7. In view of the same, the impugned order passed by the trial Court is set aside and the petition filed by the petitioners in I.A.No.1 of 2002 seeking appointment of Advocate Commissioner stands allowed. There shall be order as to costs. Consequently, connected miscellaneous petition is closed.

30.06.2026

NCC : Yes / No

Index : Yes / No

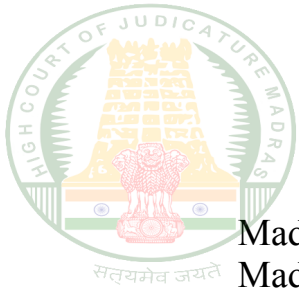
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To

1.The Additional District Munsif Court,
Ambasamudharam.

2.The Section Officer,
VR Section,

5/7



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Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

vsm

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