

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.243 of 2014
M.P.No.1 of 2014

T.Parthasarathy .. Petitioner

Vs.

B.Suganthi .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.10.2013 made in I.A.No.363 of 2013 in O.S.No.523 of 2009 on the file of the District Munsif Court, Katpadi, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

For Respondent : No appearance

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 25.10.2013 made in I.A.No.363 of 2013 in O.S.No.523 of 2009 on the file of the District Munsif Court, Katpadi, Vellore District.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.523 of 2009. The respondent filed the said suit for declaration and injunction. The petitioner filed written statement

and is contesting the suit. Trial commenced. The respondent filed proof affidavit. The petitioner did not cross examine the PW1 on number of occasions. At that stage, the petitioner filed I.A.No363 of 2013. According to the petitioner, he is the absolute owner of the 'B' Schedule property. The respondent is claiming a passage of 1½ feet in width and 45 feet in length. The said property is within the property of the petitioner. If Advocate Commissioner is appointed to measure the suit property with the help of Surveyor, it will minimise the evidence to be let in by the parties.

3.The respondent filed counter affidavit and denied all the averments made in the affidavit filed in support of the above application. She also submitted that only to drag on the proceedings, the petitioner has come out with the present application. Earlier, the petitioner was set exparte and on his application, the said order was set aside. Even after that, the petitioner did not cross examine PW1, but filed application under Section 75 C.P.C to inspect the property. The said application was rejected and exparte decree was passed. On application, exparte decree was set aside and the suit was posted for cross examination of PW1. After taking 10 adjournments, the petitioner filed the present application only to drag on the proceedings.

4.The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record and earlier order of rejection of the application filed by the petitioner under Section 75 C.P.C and suppression of the said fact by the petitioner, dismissed the application.

5.Against the said order dated 25.10.2013, made in I.A.No.363 of 2013 in O.S.No.523 of 2009, the present Civil Revision Petition is filed by the petitioner.

6.Heard the learned counsel for the petitioner and perused the materials available on record. Though notice was served on the respondent and her name is printed in the cause list, there is no representation either in person or through counsel.

7.The respondent is claiming declaration in respect of the B Schedule property. The same is denied by the petitioner and petitioner is claiming that the said property is his own. In view of the rival contentions, it is for the parties to prove their case by letting in acceptable evidence. The petitioner cannot seek appointment of Advocate Commissioner to collect the evidence on

his behalf. After commencement of trial, the petitioner was set exparte and subsequently on his application, the said order was set aside. Again, he was set exparte and exparte decree was passed against him. Again the said decree was set aside. From the records, it is seen, even after that, the petitioner has taken 10 adjournments to cross examine PW1 and then came out with the present application for appointment of Advocate Commissioner. The attitude of the petitioner and his intention is only to drag on the proceedings. In view of the same, this Civil Revision Petition is liable to be dismissed.

8. Accordingly, this Civil Revision Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

17.11.2017

Index: Yes/No
gsa

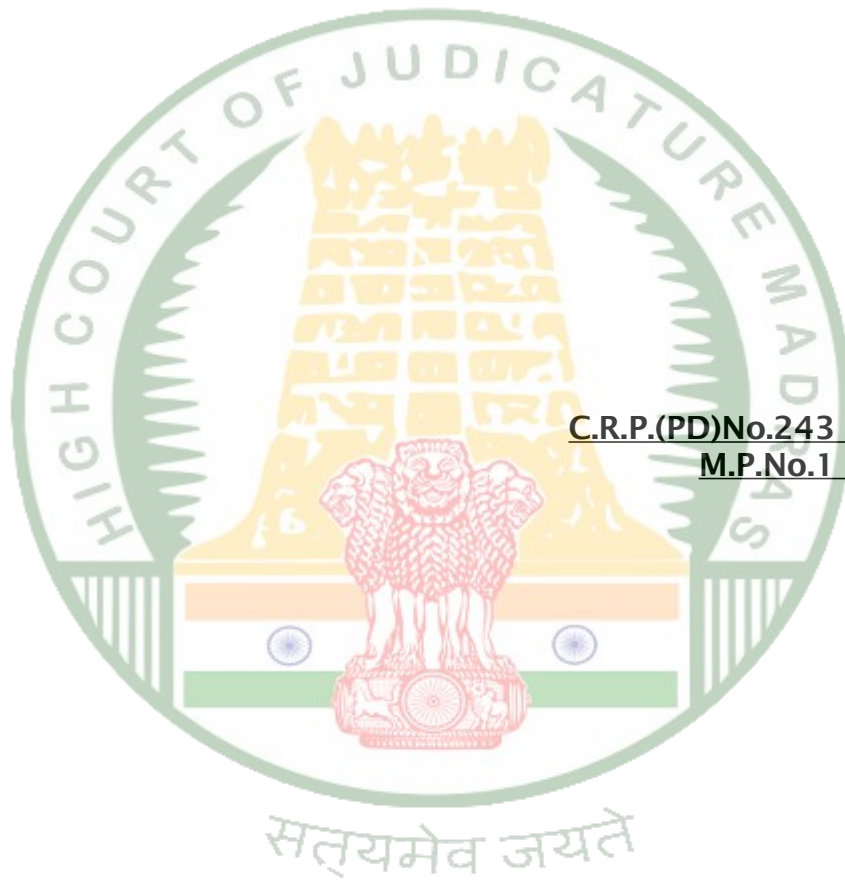
To

The District Munsif,
Katpadi,
Vellore District.

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V.M.VELUMANI,J.

gsa



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