

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP(PD).No.533 of 2018
and CMP.No.2802 of 2018

C.Natarajan

.. Petitioner

Vs

1.Chidambaram
2.Durairajan
3.Maignanam
4.Ishtalinga Mudaliar
5.Palani
6.Pushpa
7.Hemalatha
8.Thiyagarajan
9.Bharathi
10.Devi

.. Respondents

PRAYER

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decree dated 13.12.2017 made in IA.No.94 of 2017 in AS.No.163 of 2014 on the file of Subordinate Judge, Arakkonam.

For Petitioner

: Mr.A.Gouthaman

ORDER

According to the revision petitioner, the revision petitioner has filed a suit in OS.No.205 of 2004 on the file of the District Munsif,

Arakkonam for permanent injunction, which was dismissed. Against the aforesaid order, the revision petitioner has filed an appeal in AS.No.163 of 2014 on the file of the Subordinate Judge, Arakkonam. The revision petitioner has also filed an application in IA.No.94 of 2017 in the said appeal to appoint an Advocate Commissioner to inspect the plaint schedule property and the adjoining defendants' property situated to the west of his property, to measure the same, to note down the physical features of the suit property and surrounding circumstances with the assistance of Nemili taluk surveyor and to file a detailed report and plan. The fifth respondent has filed counter affidavit in the above application on 31.10.2017. After hearing both sides, the court below has dismissed the said application. Challenging the aforesaid order, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioner would submit that the revision petitioner has filed the instant application in IA.No.94 of 2017 for appointment of Advocate Commissioner. The learned counsel for the revision petitioner would submit that scrutinising the deposition of DW1 would shows that the dispute between the parties arose on the backyard portions, that too beyond 200 feet from Anna Street side, and that too, with regard to east west

measurements. Therefore, to resolve the dispute of measurement of the suit property, the petitioner has filed the present application. Further, the suit property is 'Gramanatham' as classified by the Department. The court below dismissed the application on the ground that the revision petitioner has filed an application for purpose of collecting materials to prove the possession of the suit property.

3. Heard, learned counsel for the revision petitioner and perused the materials available on record.

4. On perusal of the records, the suit has been filed by the revision petitioner in the year 2004 and the same was dismissed on 12.06.2014. Pursuant to that, an appeal suit was filed by the revision petitioner in the year 2014. Admittedly, at the stage of the arguments, the revision petitioner has filed the present application. No explanation has been given by the revision petitioner for filing the above application at the stage of Appeal suit. The court below has held that allowing the application would tantamount to collecting of evidence. In the case of *C.Panneer Selvam Vs. Padmaja* reported in **2014 (1) NWN Civil p 268**, this Court has held that "*at the part-heard stage, Advocate Commissioner cannot be appointed to collect evidence in the suit for permanent injunction and the*

application to appoint an Advocate Commissioner to collect evidence cannot be accepted". In the present case, the revision petitioner has filed the instant application at the appellate stage without showing material reasons in the affidavit and hence the said application cannot be entertained at the appellate stage. Therefore, for the aforesaid reasons, this Court is not inclined to entertain the Civil Revision Petition.

5. In fine, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

13.02.2018

Speaking/Non-Speaking order
Index :Yes/No
Internet:Yes/No
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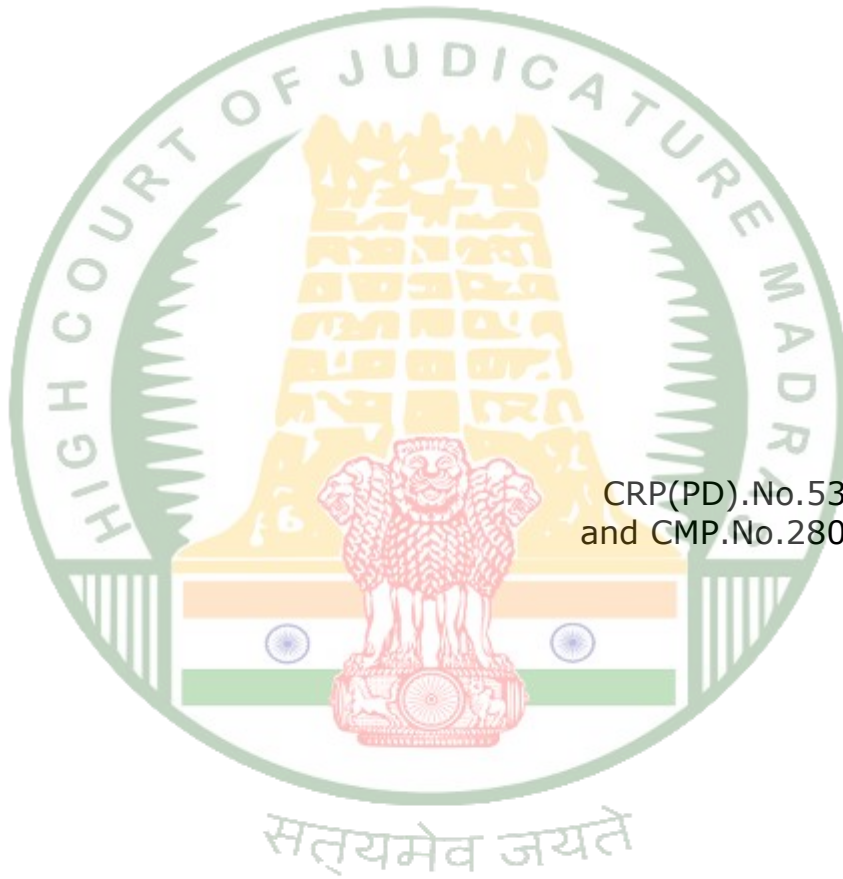
The Subordinate Judge,
Arakkonam.



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D. KRISHNAKUMAR J.,

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