

8IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD) No.23 of 2014
and
M.P.No.1 of 2014

Rukmani

...Petitioner

..Vs..

1.Aurmugam
2.Jaya
3.Dhanalakshmi
4.Valliammal
5.Shanthi

...Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India, against the fair and decretal order dated 07.11.2013 made in I.A.No.1046 of 2013 in O.S.No.280 of 2008 on the file of the learned Additional District Munsif Court, Tiruchengode.

For Petitioner

:M/s.Nithyalakshmi
For Mr.N.Manokaran

For Respondents :No appearance

ORDER

The plaintiff is the Revision Petitioner herein.

2. The petitioner/plaintiff filed O.S.No.280 of 2008 for a bare injunction and filed I.A.No.1046 of 2013 for appointment of Advocate Commissioner to note down the physical features and the same was dismissed. Hence, the Revision Petition.

3. Heard the learned counsel for the petitioner and perused the records.

4. It is seen from the order that the above suit in O.S.No.280 of 2008 was filed by the petitioner/plaintiff for bare injunction and suit was instituted in the year 2008. The suit was listed for trial and evidence of the plaintiff was commenced on 26.03.2013. On behalf of the petitioner/plaintiff, he had examined 3 witnesses and after cross examination, the matter was closed. On the side of the defendants/respondents, one witness was examined and the defendants side evidence was closed on 09.07.2013 and the suit stands posted for arguments on 12.08.2013.

5. It appears that the petitioner/plaintiff filed petition to recall D.W.1 and re-open. The case was posted on 07.08.2013 and D.W.1 was cross-examined after re-call and again the petitioner filed petition to re-call P.W.1 for further chief-examination and to re-open and the same is posted on 29.09.2013 and again after re-call P.W.1 was further examined and cross-examined and when the suit was again posted for arguments, the present I.A for appointment of Commissioner was filed by the petitioner/plaintiff to note down the physical features of the property. The learned District Munsif dismissed the same and hence, the present Civil Revision Petition.

6. The learned counsel for the petitioner has submitted that the Advocate Commissioner if appointed will be able to visit the suit property to note down the physical features and to measure the same with the help of a qualified surveyor to reduce the volume of evidence. Noting down the physical features would not amount to collecting of evidence in support of the plaintiffs. The maxim "a picture is worth a thousand words" and instead of both the sides prolonging the trial by adducing oral evidence on an enormous scale, the report of the Commissioner would solve the entire problem.

7. Though the maxim "a picture is worth a thousand words" is not a legal factum maxim, for appointment of Advocate Commissioner the mandatory provision under order 26 Rule 9 C.P.C has to be followed. The development of the case and also the proceedings that has been taken before the trial Court clearly indicate that the plaintiff side and the defendants side evidence have been closed. Thereafter, re-open petition for D.W.1 and P.W.1 was recalled after re-opening the respective side further chief and cross has been over and the matter was again posted for arguments.

8. At this juncture, this application has been filed and hence, the reason assigned by the trial Court that it is only to drag on the proceedings and to collect further evidence is found to be just and proper. Hence, the order impugned does not call for any interference at the revision stage.

9. In the result, this Civil Revision Petition is dismissed. Since the Trial Court is directed to proceed along with the suit and dispose of the same within a period of two weeks from the date of receipt of a copy of this order. No costs.

09.12.2019

nvi

Index:Yes

Speaking Order:Yes

To

The Additional District Munsif Court, Tiruchengode.

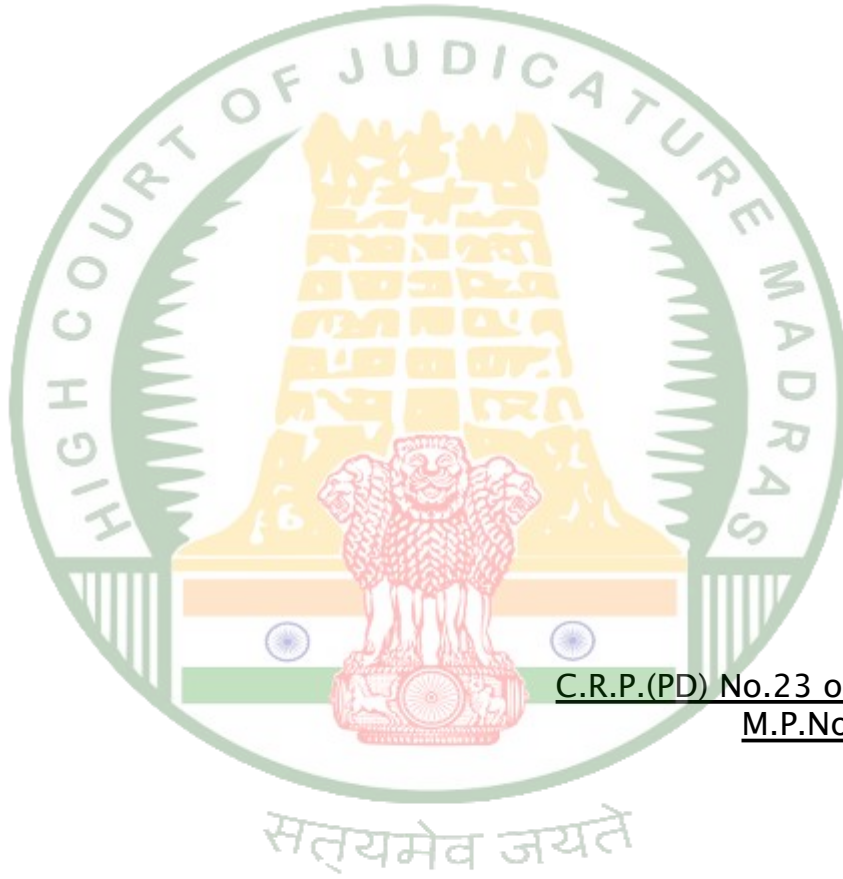


WEB COPY

C.R.P.(PD) No.23 of 2014 and
M.P.No.1 of 2014

RMT.TEEKAA RAMAN,J.,

nvi



C.R.P.(PD) No.23 of 2014 and
M.P.No.1 of 2014

WEB COPY

09.12.2019