

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P.(PD) No.3596 of 2014andM.P.No.1 of 2014

1. Lakshmanan,
2. Jayalakshmi,
3. Sivakumar

...

Petitioners

Vs.

CT.Selvam @ Tamilselvam

...

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in M.P.No.213 of 2014 in R.C.O.P.No.1118 of 2013 on the file of the Learned XV Judge, Small Causes Court, Chennai, dated 04.08.2014.

For Petitioners	:	Mr.S.Ambigapathi
For Respondent	:	No appearance
		(Court Notice served)

ORDER

The petitioners as landlords filed R.C.O.P.No.1118 of 2013 seeking eviction of the respondent on the ground of own use and occupation.

2. The respondent has filed a counter to resist the eviction petition. The second petitioner was examined in this case and after completion of the evidence of landlords, the tenant had taken out an application in M.P.No.213 of 2014 seeking appointment of an Advocate Commissioner alleging that one shop portion is kept vacant by the landlords.

3. The Rent Controller, despite serious objection by the landlords, appointed an Advocate Commissioner. Challenging the order, the present civil revision is filed.

4. Despite service of notice to the respondent, he has not chosen to appear and contest the civil revision petition.

5. Mr.S.Ambigapathi, learned counsel for the petitioners submitted that the respondent is a tenant under the petitioners and admittedly, after expiry of the lease period, the landlords sought the premises for their own use and occupation. The Rent Controller, without ascertaining the bonafide requirement of the landlords, have erred in appointing Advocate Commissioner to note down the physical features of the petition property. It is further submitted that even though one portion is vacant, the tenant cannot dictate terms to the landlords for their occupation of the petition premises.

6. It is not in dispute that the respondent is a tenant under the petitioners. The tenant filed the application on the only ground that one of the shops in the petition premises is under lock and key with the landlords and to establish the fact, he sought for appointment of Advocate Commissioner. It is admitted by the landlords that there are two shops in the petition premises

and they require both shops for their own use and occupation and further contended that this application was filed to drag on the proceedings. Indisputably, the evidence, on the side of the landlords, was over and thereafter, the tenant has filed the application.

7. In my considered opinion, appointment of an Advocate Commissioner is not required in this case. The Rent Controller has to find out whether the requirement is bonafide or not. In the result, the civil revision petition is allowed, the order dated 04.08.2014 passed by the XV Court of Small Causes, Chennai, in M.P.No.213 of 2014 in R.C.O.P.No.1118 of 2013 is set aside. The Rent Controller shall dispose of the eviction petition, on merits and in accordance with law, within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

03.02.2015

Index : Yes/No
Internet: Yes/No
sms

To
The Learned XV Judge, Small Causes Court, Chennai.

K.KALYANASUNDARAM,J.

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