

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.12.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.2621 of 2015
and M.P.No.1 of 2015

1.S.Raju

2.S.Palanisamy

3.S.Sambamoorthy

... Petitioners

Vs.

S.Balasundaram

... Respondent

Civil Revision Petition filed under Section 115 of the Civil Procedure Code against the fair and decreetal order dated 04.09.2014 made in E.A.No.120 of 2013 in E.P.No.53 of 2012 in O.S.No.1033 of 2001 on the file of the Principal District Munsif Court, Coimbatore.

For Petitioners : Mr.R.Subramanian

For Respondent : Mr.G.B.Saravanabhavan

ORDER

Challenging the fair and decreetal order passed in E.A.No.120 of 2013 in E.P.No.53 of 2012 in O.S.No.1033 of 2001 on the file of the Principal District Munsif Court, Coimbatore, the defendants have filed the above Civil Revision Petition.

2.The trial Court, by its judgment and decree dated 05.08.2004, dismissed the suit for partition and permanent injunction and granted a decree in favour of the plaintiff with regard to the payment of arrears of rent from 01.06.2000 to 31.05.2001 payable by the defendants 3, 6 & 7, amounting to Rs.6,600/- and also decreed the suit by directing the defendants 3, 6 & 7 to pay the arrears of rent within two months to the plaintiff and also decreed the suit by finding that the plaintiff is entitled to one-fourth share in the rents. So far as the suit filed as against the defendants 1, 2, 4 & 5, who are all the tenants, is concerned, the suit was dismissed.

3.Pursuant to the decree passed in O.S.No.1033 of 2001, the plaintiff filed an Execution Petition in E.P.No.53 of 2012. In the said Execution Petition, the plaintiff took out an application in E.A.No.120 of 2013 seeking for appointment of Advocate Commissioner to fix the fair rent of the property with the help of a Government Engineer. The application filed by the Decree Holder was opposed by the defendants. In the affidavit filed in support of the petition, the Decree Holder has stated that he is entitled to one-fourth share in the rental income and that the rent received by the parties are much more and therefore, an Advocate Commissioner should be appointed to fix the fair rent of the property. The Execution Court, taking into consideration the case

of both parties, allowed the application by appointing an Advocate Commissioner to fix the fair rent.

4.It is pertinent to note that there is no provision under Order 21 of the Civil Procedure Code seeking for appointment of Advocate Commissioner to fix the fair rent in respect of the property. The Execution Court is bound by the decree passed by the trial Court and it cannot go beyond the decree passed by the trial Court. Therefore, the Execution Court cannot fix the fair rent on its own and execute the same. The order passed by the Execution Court is erroneous and is liable to be set aside.

5.In the absence of any provision under the Civil Procedure Code for fixing the fair rent by the Execution Court, the Execution Court had erroneously appointed an Advocate Commissioner to fix the fair rent in respect of the property. The fair and decreetal order passed by the Execution Court are liable to be set aside. Accordingly, the same are set aside.

6.Since the Execution Petition in E.P.No.53 of 2012 is pending from the year 2012, I direct the Principal District Munsif, Coimbatore to dispose of the Execution Petition in E.P.No.53 of 2012, on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order.

7. With this observation, the Civil Revision Petition is allowed. No costs.
Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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15.12.2015

To

The Principal District Munsif Court,
Coimbatore.

M.DURAIWAMY,J.
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