

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.559 of 2015

E.Kanniappan

..Petitioner/tenant

/vs/

1.N.Chandrasekaran

2.N.Hemalatha

3.N.Uma

..Respondents/landlords

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 16.10.2014 passed in M.P.No.111 of 2014 in R.C.O.P.No.40 of 2010 on the file of the Principal District Munsif cum Rent Controller, Poonamallee.

For Petitioner : Mr.R.Bharath Kumar

For Respondents: Mr.S.Parthasarathy

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 16.10.2014 passed in M.P.No.111 of 2014 in R.C.O.P.No.40 of 2010 on the file of the Principal District Munsif cum Rent Controller, Poonamallee.

2.The respondents/landlords filed a petition for eviction on the ground of willful default, denial of title, acts of waste, nuisance and own use and occupation. When the matter was posted for evidence of the revision petitioner/tenant, at the time, the revision petitioner has filed a petition in M.P.No.111 of 2014 for appointment of an advocate commissioner and examine his cross examination. The trial Court, after hearing both sides, dismissed the petition, against which, the present revision petition is preferred by the tenant.

3.Learned counsel appearing for the revision petitioner/tenant submits that in that petition, he has stated that since the revision petitioner was met with an accident on 01.05.2014, he has undergone surgery in L3, L4 and L5 and that he is not able to walk anywhere. Hence, an Advocate Commissioner may be appointed to record his evidence. But, the trial Court has without considering the same, dismissed the petition. Therefore, the petitioner prayed for setting aside the order passed by the trial Court.

4. Resisting the same, the learned counsel appearing for the respondents/landlords would submit that the averments made in the petition and the discharge summary, are entirely different. In that petition, the tenant/revision petitioner has stated that the accident took place on 01.05.2014, but in the discharge summary, it was stated that the revision petitioner was admitted in the hospital on 28.04.2014 and he was discharged from the hospital on 03.05.2014. He would further submit that as one and half years have already been over, there is no need to appoint the Advocate Commissioner and hence, the trial Court has rightly dismissed the petition. Therefore, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. Now, the Court has to decide whether the appointment of Advocate Commissioner is necessary to record the evidence of revision petitioner/tenant?. In the affidavit filed in support of the petition, the revision petitioner/tenant has stated that he met with an accident on 01.05.2014. So, he is not able to move anywhere and the Doctor has advised to take bed rest. On a

perusal of the discharge summary, it shows that the revision petitioner/tenant was admitted in the hospital on 28.04.2014 and the surgery was done on 29.04.2014 and he was discharged on 03.05.2014. It clearly shows that the injury sustained by the revision petitioner/tenant is not serious in nature. The dispute between the landlords and tenant is in respect of paying rent and he did not vacate the premises. Further, the revision petitioner/tenant did not produce any medical certificate showing that he has sustained serious injuries and hence, he could not able to attend the Court. It is pertinent to note that now a days all the Courts are provided with infrastructure. Under such circumstances, the revision petitioner/tenant may very well sit in the Court and depose the evidence before the Court. Furthermore, on the discharge summary itself, it was specifically mentioned that the revision petitioner/ tenant was discharged on 03.05.2014, now we are in 2015.

7.Considering the aforesaid circumstances of the case, I do not find any reason to interfere with the findings of the trial Court. Hence, this petition deserves to be dismissed. Accordingly, this revision petition is dismissed. Since the case has been posted

for respondent's side evidence, the learned Principal District Munsif cum Rent Controller, Poonamallee is directed to dispose of R.C.O.P.No.40 of 2010, within a period of two months, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is also closed.

08.12.2015

Index:Yes/No
Internet:Yes/No
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To

The Principal District Munsif cum Rent Controller,
Poonamallee.

R.MALA,J.

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