

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4080 of 2015
and M.P.No.1 of 2015

D.Rangaraj

.. Petitioner

Vs

1.M.Palanisamy
2.Gowri Palanisamy
3.Dharani

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.07.2015 made in R.C.A.No.21 of 2014 on the file of the First Additional Subordinate Court, Erode confirming the fair and decreetal order dated 25.07.2014 made in I.A.No.29 of 2014 in R.C.O.P.No.15 of 2010 on the file of the Rent Controller, Erode.

For Petitioner : Mr.C.Munusamy
For Respondents : Mr.V.Raghavachari

ORDER

The Civil Revision Petition is filed against the order dated 29.07.2015 made in R.C.A.No.21 of 2014 on the file of the First Additional Subordinate Court, Erode confirming the order dated 25.07.2014 made in I.A.No.29 of 2014 in R.C.O.P.No.15 of 2010 on the file of the Rent Controller, Erode.

2.The respondents/landlords who were three in number filed an eviction petition on the ground of default and owner's occupation stating that petition mentioned premises is necessary for second respondent's personal occupation for doing practice in Siddha medicine. During the pendency, the petitioner filed I.A.No.29 of 2014 to issue summons to the second respondent/landlord to examine him as witness to prove that the property is not required for personal occupation of the second respondent/second landlord. The Trial Court after hearing both sides has dismissed the application. Against which, the petitioner preferred R.C.A.No.21 of 2014 which was also dismissed confirming the order passed by the Trial Court. Against which, the present Civil Revision Petition has been preferred.

3.Learned counsel for the petitioner submitted that in order to prove that the petition mentioned property is not required for the personal occupation of the second respondent/second landlord to have practice in Siddha medicine, he wanted to examine the second landlord/second respondent before the Trial Court. He would further submit that as per Order XVI Rule 21 of CPC, he is entitled to summon the witness to examine the same. Hence, he prayed for setting aside the impugned order passed by both the Court below. To substantiate his arguments, he relied upon the decision reported in **2001 (3) CTC 20 (V.K.Periasamy @ Perianna Gounder vs.**

D.Rajan).

4.Resisting the same, the learned counsel for the respondents submitted that the above citation is not applicable to the facts of the present case because in that case the first defendant is not the contesting party and he is supporting the case of the plaintiff and hence, he was summoned to depose evidence on behalf of the plaintiff and it was allowed. Hence, 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.The respondents/landlords filed a petition for eviction on the ground of personal occupation and willful default. The petitioner herein has filed a detailed counter and contested the same. During the pendency, the petitioner filed an application to issue summons to the second respondent/second landlord to appear before the Court and depose on behalf of the petitioner. The said application was dismissed. Against which, the petitioner preferred R.C.A.No.21 of 2014 which was also dismissed confirming the order passed by the Trial Court.

7. Now this Court has to decide that as per Order XVI Rule 21 of CPC whether summon can be issued to the second respondent/second landlord to appear before the Court and depose? At this juncture it is appropriate to incorporate Order XVI Rule 21 of CPC, which is as follows:

“21. Rules as to witnesses to apply to parties summoned:- Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.”

8. The learned counsel for the petitioner also relied upon the decision reported in *2007 (3) CTC 20 (V.K.Perisamay @ Perianna Gounder vs. D.Rajan)*. But the above citation is not applicable to the facts of the present case because in that case, it was clearly held that the first defendant is not a contesting party and he is supporting the case of the plaintiff and hence summon was issued to him to appear before the Court and depose. But here in this case, the petition has been filed by the landlords for eviction on the ground of personal occupation. In such circumstances, the above citation is not applicable to the facts of the present case. It is well settled dictum of the Apex Court that no person shall be compelled to appear before the Court and depose against him. So, I do not find any reason to interfere with the order

passed by both the Courts below and the same are hereby confirmed. Consequently, the Civil Revision Petition is dismissed as devoid of merits.

9. In the result, the Civil Revision Petition is dismissed with costs of Rs.1,000/- (Rupees One Thousand only) to be paid to the Chief Minister's Flood Relief Fund. Consequently, connected miscellaneous petition is closed.

10. At this juncture, the learned counsel for the respondents sought for early disposal of R.C.O.P.No.15 of 2010. Considering the request made by the learned counsel for the respondents, the learned Rent Controller, Erode is directed to dispose of R.C.O.P.No.15 of 2010 within six months from the date of receipt of a copy of this order.

05.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

1. The First Additional Subordinate Judge, Erode.

2. The Rent Controller, Erode.

R.MALA. J.,

cse

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