



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2016

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) (MD) No.2447 of 2015

and

M.P. (MD) No. 1 of 2015

Rajamani

.. Petitioner/Petitioner/
Tenant

Vs.

R. Jeyaram

.. Respondent/Respondent/
Landlord

PRAYER: Petition is filed under Article 227 of Constitution of India, to allow this Civil Revision Petition thereby to set aside the fair and decreetal order dated 04.07.2015 made in I.A.No.14 of 2015 in R.C.O.P.No.5 of 2014 on the file of the District Munsif Court, Sivakasi.

For Petitioner : Mr. T.Antony Arul Raj
For Respondent : Mr.N.Dilipkumar

O R D E R

This Civil Revision arises out of the order passed by the learned District Munsif, Sivakasi, in I.A.No.14 of 2015 in R.C.O.P.No.5 of 2014, dated 04.07.2015.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the records.

3. The facts of the case are as follows:-

The respondent herein filed R.C.O.P.No.5 of 2014 before the learned Rent Controller, Sivakasi, seeking for eviction on the ground of own use and occupation in the shop in Old Door No.43/1, New Door No.116 in New Road Street, Sivakasi Town, Virudhunagar District. Earlier the respondent filed R.C.O.P.No.3 of 2012, against the petitioner on the ground of willful default and the



same was dismissed on merits. The present application was filed on the ground of own use and occupation.

4. The special contention of the petitioner in R.C.O.P., is that the respondent is having another shop in the same building. On this regard, there is a specific question in the cross examination of the petitioner. The respondent submitted no objection in appointing Advocate Commissioner to verify the real fact.

5. According to the Revision petitioner, the Revision petitioner is in possession to an extent of 50 Sq.ft., the petitioner stated in his petition he wants 100 sq. ft., for his use and occupation. Therefore, the Revision petitioner filed an application in I.A.No.14 of 2015 in R.C.O.P.No.5 of 2014 before the District Munsif Court, Sivakasi, to appoint an Advocate Commissioner to prove the falsification of the statement made by the respondent. The District Munsif, Sivakasi, without properly appreciating the case of the petitioner, dismissed the aforesaid application. Therefore, the present petition has been filed by the petitioner.

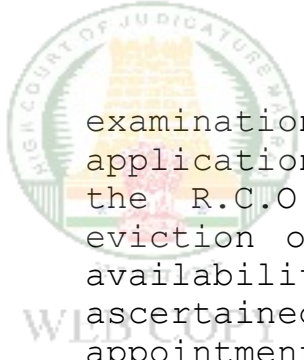
6. Per contra, the learned counsel for the respondent would submit that the respondent is running a fertilizer and pesticide shop in New Door No.118 and a seed shop in New Door No.120 and therefore, he requested Door No.116 to set up a shop to sell cattle feeds. The I.A.No.14 of 2015 filed by the Revision petitioner was rightly dismissed by the Trial Court on the ground that the landlord is entitled to seek eviction of a premise of his choice and having more than one building will not disentitle him. Hence, there is no warrant to interfere this Court to appoint an Advocate Commissioner.

7. *The point for consideration is,* whether it is necessary to appoint an Advocate Commissioner to ascertain whether alternative site is available.

8. The respondent herein filed R.C.O.P.5 of 2014 seeking eviction from the shop to the petitioner in Door No.43/1 New Door No.116, New Door No.116 in New Road Street, Sivakasi Town, Virudhunagar District for own use and occupation, the aforesaid petition in I.A.No.14 of 2015 was filed by the petitioner for appointment of Advocate Commissioner to prove that the shops owned by the respondent is vacant, therefore, it is necessary to appoint an Advocate Commissioner to ascertain the report. There is an alternative site is available for the purpose to find out the availability of the alternative shops.

<https://hcservices.ecourts.gov.in/hcservices/>

9. On perusal of the records, it is clearly shown that the evidence of the plaintiff side is concluded and posted for



examination of the defendant side, at this stage, the present application has been filed by the Revision petitioner. Therefore, the R.C.O.P., has been filed by the respondent seeking for eviction on the ground of own use and occupation. There is an availability of other shops owned by the respondent has to be ascertained at the time of the examinations of the parties. The appointment of the Advocate Commissioner is nothing to collect the evidence of the possession of the property. Therefore, I relying the Judgment in **2009 (3) CTC 531 (P.Devendran V. C.Raghunatha Reddy)**, wherein this Court has held that Civil Revision Petition under Article 227 of Constitution of India is not maintainable against the dismissal of the application, seeking appointment of an Advocate Commissioner and the petitioner has to establish before the Rent Control Court through the way of examination, cross examination or producing the necessary documents at the time of examination of the witnesses.

10. Accordingly, the liberty is granted to the petitioner to file appropriate applications before the Court below to decide in accordance with law, the issue of availability of the alternative shops owned by the respondent herein/landlord.

11. In view of the above said facts and circumstances of the case, the Civil Revision petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Sivakasi.

+1 cc to M/s.T.Antony Arulraj, Advocate in SR.No. 56733/2016

+1 cc to M/s.N.Dilip Kumar, Advocate in SR.No. 57088/2016

pmu

CSL/SS-3/SAR-J/21.11.2016: 3P/4C

C.R.P. (MD) No. 2447 of 2015
and
M.P. (MD) No. 1 of 2015
27.09.2016