



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP (MD).No.1897 of 2016(PD)

and

CMP (MD)No.9054 of 2016

M/s.Sri Krishna Steels
Partnership Firm Through one of its
partner S.P.Radhakrishnan .. Petitioner/Petitioner/defendant
Vs.
Virudhunagar Hindu Nadar Uravinmurai,
Palani,
Represented by its President
V.Perumal ..Respondent/Respondent/plaintiff

Prayer: This Civil Revision Petition is filed under Section 115 of CPC against the fair and decretal order dated 12.04.2016 passed in I.A.No.1080 of 2015 in O.S.No.119 of 2014 on the file of District Munsif Court, Palani.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mr.V.K.Vijayaragavan

ORDER

This Civil Revision Petition has been filed as against the order dated 12.04.2016 made in I.A.No.1080 of 2015 in O.S.No.119 of 2014 on the file of the District Munsif Court, Palani.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.119 of 2014 on the file of District Munsif Court, Palani.

3.The respondent filed the suit for recovery of possession with a direction to the petitioner to vacate the suit property and hand over possession of the same to the respondent. The petitioner filed written statement in the month of January, 2015 and contesting the suit. The petitioner filed I.A.No.1080 of 2015 for appointment of Advocate Commissioner to inspect the suit property with the help of Village Administrative Officer, Surveyor and Civil Engineer, to locate and measure the suit property and value the improvements made by the petitioner.

4.According to the petitioner, the property was let out to him on 01.07.2000 and as a tenant in the suit property for more than 15 years, he is carrying on business in the name of M/s.Sri Krishna



Steels and paying rent regularly. In the year 2014, the respondent wanted enhancement of rent. When the petitioner refused to accept the same, the respondent did not receive rent given by the petitioner. Therefore, the petitioner filed RCOP No.5 of 2014 and now, depositing the rent into the Court. The suit property was in a dilapidated condition and therefore, with the consent of the respondent, the petitioner made improvements and spent a sum of Rs.2,00,000/-. The suit premise is without any basic amenities, such as water and toilet. Therefore, he sought appointment of Advocate Commissioner.

5.The respondent filed counter affidavit and opposed the said application. The respondent submitted that the petitioner did not make any improvement, as there is no necessity for the same. The respondent did not give consent for such improvement. The application for appointment of Advocate Commissioner is not necessary to decide the issue involved in the suit.

6.The learned District Munsif considering the materials on record and averments made in the affidavit and counter affidavit, dismissed the application holding that appointment of Advocate Commissioner is not necessary for deciding the suit on merits and even if there is any improvement, advocate commissioner cannot decide who has made improvements. Against the said order of dismissal, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel for the petitioner submitted that the learned District Munsif, mechanically dismissed the petition filed by the petitioner for appointment of Advocate Commissioner. The learned Judge has not appreciated the provisions under Order 26, Rule 9 of Civil Procedure Code in proper perspective. The learned Judge ought to have seen that it is necessary to appoint an Advocate Commissioner to note down the physical features and improvement made by the petitioner.

8.The learned counsel for the petitioner relied upon the Judgement of this Court in **GURUNATHAN v. T.KRISHNAPPA**, reported in **2007 (2) CTC 159**, wherein it has been held that no evidence was adduced to show that if building was demolished and reconstructed it would fetch more income and thus the eviction order passed by the authorities was set aside and the tenant was directed to deliver possession to landlord to carry out repair work with a direction to landlord to deliver possession of building to him after carrying out such repair.

9.The learned counsel for the respondent submitted that the respondent has filed the suit for recovery of possession. To decide whether the respondent is entitled to such relief or not, it is not necessary for appointment of Advocate Commissioner to note down the

