



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.1901 of 2016(PD)

and

CMP (MD)No.9058 of 2016

N.Vishwakumar

.. Petitioner/Petitioner/Defendar

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 decreetal order dated 12.04.2016 passed in I.A.No.1084 of 2015 in O.S.No.123 of 2014 on the file of District Munsif Court, Palani.

For Petitioner : Mr.M.P.Senthil

For Respondent : Mr.V.K.Vijayaragavan

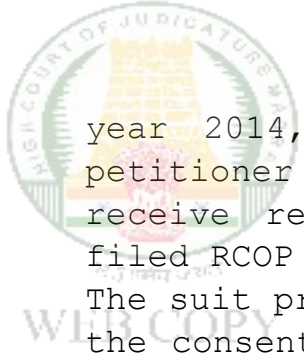
ORDER

This Civil Revision Petition has been filed as against the order dated 12.04.2016 made in I.A.No.1084 of 2015 in O.S.No.123 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.123 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.1084 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 24.04.1996 and as a tenant in the suit property for more than 20 years. He is carrying on business at Shop No.18, Kamarajar Complex, Dindigul Road, Palani 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.3 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.1,50,000/-. The suit premise is without any basic amenities, such as water and toilet. Therefore, he sought appointment of Advocate Commissioner.

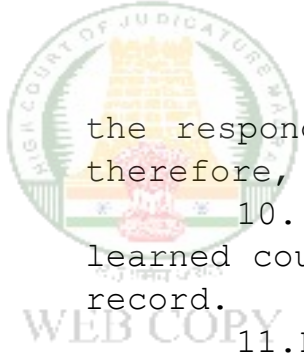
5.The respondent filed counter affidavit and opposed the said application. The respondent submitted that the petitioner did not make any improvement, as there is no necessity for the same. The respondent did not give consent for such improvement. The application for appointment of Advocate Commissioner 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 to appoint of Advocate Commissioner to note down the physical features. The petitioner has not made any improvement and



the respondent has not given any consent for such improvement and therefore, prayed for dismissal of the Civil Revision Petition.

10. I have heard the learned counsel for petitioner and the learned counsel for the respondent and also perused the materials on record.

11. From the materials on record, it is seen that the suit is for recovery of possession with a direction to vacate and hand over the possession to the respondent. The petitioner is contesting the suit by filing written statement. During the pendency of the suit, the petitioner has come out with the present petition stating that he has made improvement to an extent of Rs.1,50,000/-, with the consent of the respondent. It is his further contention that the suit premises is not having basic amenities such as water and toilet facilities and therefore, he filed the application for appointment of Advocate Commissioner. The learned Judge has considered all the averments in proper perspective and dismissed the application by giving cogent and valid reason. The learned Judge has correctly held that Advocate Commissioner cannot decide as to who has made improvement and noting down the physical features of the suit property, is not necessary to decide the issue in the suit. Hence, there is no irregularity or illegality in the order passed by the learned Judge warranting interference by this Court. In the facts and circumstances of the case, the Judgement relied on by the learned counsel for the petitioner, is not applicable to the facts of the present case.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Court, Palani.

CRP (MD) .No.1901 of 2016

15.12.2016

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