

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.603 of 2016

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed by the 1st respondent in IA.no.1784 of 2015 in RCC.No.65 of 2012 assailing the order dated 04.01.2016 of the learned Rent Controller-cum-Principal Junior Civil Judge, Rajahmundry, passed therein.

2. I have heard the submissions of Sri M.V. Suresh, learned counsel for the revision petitioner, and of Sri Ch. Dhanamjaya, learned counsel for the respondents 1 to 4. I have perused the material record.

3. The facts that led to the filing of the revision petition, in brief, are as follows:

The respondents 1 to 4 herein, who are the petitioners in the Rent Control Case, filed the afore-stated IA under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, for appointment of an advocate commissioner to inspect the petition schedule property and also its first floor and note down its features. The said application was resisted by the 1st respondent-revision petitioner by filing a counter. On merits and by the orders impugned in this revision, the learned Rent Controller allowed the petition and appointed an advocate commissioner. In the said orders, the Commissioner appointed was also directed to answer the work memos, if any, served by any of the parties subject however to the requests in the memos therein are within the purview of the directions in the commission warrant. Aggrieved thereof, the 1st respondent filed this revision.

4. The case of the petitioners-landlords/respondents 1 to 4 herein (hereinafter referred to as 'landlords') in support of their said request, in brief, is this: - 'They filed the Rent Control Case for eviction of the 1st respondent-tenant (hereinafter referred to as 'tenant') from the petition schedule property, *inter alia*, claiming that they require the said property *bona fide* for their additional accommodation. The 2nd respondent is no other than the brother of the landlords. He remained *ex parte* in the proceedings before the learned Rent Controller. The tenant is opposing the request of the landlords for eviction, *inter alia*, on the ground that the landlords are not in occupation of the 1st floor situated over the petition schedule property. Therefore, the landlords filed the application to appoint an advocate commissioner to note down the features of the petition schedule property as well as the property situate in the first floor of it.'

5. The case of the tenant in his counter, apart from denial of the averments made by the landlords, is this: 'It is for the landlords to prove the *bona fide* requirement by adducing necessary evidence. During course of enquiry both the parties adduced oral and documentary evidence to substantiate the contentions and rival contentions. When the matter is at the stage of arguments, the landlords filed the present application for appointment of an advocate commissioner to establish that they are residing in the first floor of the petition schedule building. It is for the Court of the learned Rent Controller to consider, on appreciation of evidence, as to whether the landlords are in actual possession of the first floor as on the date of the filing of the eviction case but not during a period subsequent to the filing of the eviction case. The aspect of possession of the said property in the first floor by the landlords has to be determined on

evaluation and appreciation of evidence; the said function being a judicial function cannot be delegated; and a commissioner cannot be appointed to gather evidence. Therefore, the petition is liable to be dismissed.'

6. At the hearing, the learned counsel for the parties reiterated the respective contentions of the parties, stated supra.

7. Sri M.V. Suresh, learned counsel for the tenant, placed strong reliance on the decision in re P. Moosa Kutty¹ in support of the contention that a commissioner cannot be appointed to gather or collect evidence. However, Sri Ch. Dhanamjaya, learned counsel for the landlords would submit that both the parties adduced evidence and that if a Commissioner is appointed only to note down the physical features of the properties no prejudice would be caused and that the report of the Commissioner, which the Commissioner is going to file, would be one more piece of evidence before the learned Rent Controller and that the said evidence in the form of a Commissioner's Report would be helpful for better appreciation of the oral and documentary evidence and in effectively adjudicating the *lis* either way; therefore the order of the learned Rent Controller is justified. The learned counsel also cited the decision in M/s.Lakshmi Cycle Importing Company per its partner Sri Sampatraj v. Massod Abdul Khader and others². I have gone through the decision cited. A perusal of the facts and the ratio in the decision would reflect that ultimately the issue as to whether a commissioner should be appointed or not turned on the facts of the said case.

¹ AIR 1953 MADRAS 717

² 1978(2) ALT 405

8. In the case on hand admittedly the landlords filed the eviction case against the tenants stating *inter alia* that they are in occupation of the 1st floor portion. The tenant is admittedly disputing the landlords' claim. The landlords are now not seeking appointment of a commissioner for finding out as to whether they are in actual possession of the 1st floor of the building. As rightly contended by the learned counsel for the tenant, the landlords are required to establish their case that they were and are in occupation of the first floor not only as on the date of institution of the eviction case but also at all relevant times; and mere establishing the fact that they are in possession of the said property at the time the commissioner made a visit to the property to note down the physical features is not going to advance their case. However, the learned counsel for the landlords would submit that in a rent control proceeding, the learned Rent Controller can take note of events subsequent to the institution of the case upto the date of the hearing of the arguments. Be that as it may. Be it noted that the request of the landlords was not made to note down as to who was/is in occupation of the 1st floor of the building in which the petition schedule is a part nor was the commissioner appointed for the said purpose. As rightly pointed out by the learned counsel for the landlords, if a Commissioner visits both the properties in question and notes down the physical features, in the well considered view of this Court, there would be an assured piece of evidence other than oral and documentary evidence, which in the ultimate analysis may be helpful to the Court to better appreciate the oral and documentary evidence as generally in the oral evidence the parties assert/reaffirm their respective contentions and try to maintain their respective stands in the cross examinations. If the topographical details of the petition schedule property

as well as the property in the first floor of the building are noted and the requests in the work memos, if any, served on the Commissioner by the respective parties are answered as per warrant directions by the commissioner, that evidence in the form of a commissioner's report that may be placed on record by no stretch of imagination can be termed as 'gathered evidence' and, therefore, in the facts peculiar to the case the ratio in the decision in P. Moosa Kutty (1 supra) does not advance the case of the tenant. The request for appointment of an Advocate Commissioner made by the landlords for noting down the physical features of the properties cannot be termed as an attempt directed towards gathering or collection of evidence. The law is lucid that in any case in which the Court deems that a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a Commission to any person as it thinks fit directing him to make an investigation and report to the Court.

9. On the above analysis, this Court finds that the learned Rent Controller is justified in passing the impugned order appointing an advocate commissioner and that the order impugned does not brook interference, in the facts and circumstances of the case.

10. In the result, the Civil Revision Petition is dismissed confirming the order of the learned Rent Controller.

Miscellaneous petitions, if any, pending in this revision shall also stand dismissed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

16th November, 2016
Vjl