

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.273 of 2014
and M.P.No.1 of 2014

S.R. Ashraf ali

...Petitioner

Vs

P. Mohamed Yasin

...Respondent

Prayer:- Civil Revision Petition filed Under Article 227 of Constitution of India to file the Memorandum of Civil Revision Petition in this court against the fair and decretal orders passed in I.A. No. 7 of 2013 in RCOP. No. 7 of 2010 dated 17/07/2013 on the file of the Court of Principal District Munsif, Chidambaram.

For Petitioner : Mr. A.Muthukumar

For Respondents : Mr. N.Sankaravadivel

ORDER

The respondent filed Rent Control Original Petition in RCOP No.7 of 2010 before the Rent Controller for fixation of fair rent. The Original Petition was opposed by the petitioner by filing counter.

2. The trial Court appointed Advocate Commissioner along with an

Engineer to inspect the property and submit a report. The Advocate Commissioner along with an Engineer visited the property in question and submitted a report. Thereafter, the petitioner filed application in I.A.No.7 of 2013 to re-issue the warrant for filing another report.

3. The learned trial Judge having found that there was no denial in the counter filed by the petitioner in RCOP No.7 of 2010 with respect to the schedule property, dismissed the application. Feeling aggrieved, the unsuccessful petitioner in I.A.No.7 of 2013 is before this Court.

4. The learned counsel for the petitioner contended that boundaries were not indicated in the report submitted by the Commissioner. According to the learned counsel, the trial Court made certain observations with regard to the merits of the suit and the same would prejudice the case of the petitioner during trial.

5. The learned counsel for the respondent on the other hand contended that even though in the petition schedule, the area of the property was mentioned as 475 sq.ft., the report submitted by the Advocate Commissioner indicates that the available extent is only 440 sq.ft. According to the learned counsel, there was no denial of the

extent of property and the boundaries in the counter filed by the petitioner in RCOP No.7 of 2010 and as such, the application filed subsequently for re-inspection is only a part of his tactics to delay the matter.

6. The respondent filed a petition in RCOP No.7 of 2010 for fixation of fair rent. The schedule in the Original Petition contains the description of the property. The respondent filed a counter in the Original Petition. Though a general denial was made with respect to the schedule property, there was no specific denial made by the petitioner with regard to the extent of property or boundaries. It was only after submitting the report by the Advocate Commissioner, the petitioner has come up with a case that the boundaries were not correctly mentioned. In case, incorrect boundaries were shown in the schedule to the Original Petition, the petitioner ought to have taken up the issue in the counter filed in the Original Petition. I am, therefore, of the view that there is no merit in the contention that the boundaries were not correctly marked by the Advocate Commissioner.

7. The second contention of the petitioner appears to be the observation made by the learned Judge with reference to the merits of

the matter in I.A.No.7 of 2013. Those observations were made only for

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the purpose of deciding the application. Therefore, I make it clear that the observations contained in I.A.No.7 of 2013 shall not be taken note of by the learned trial Judge while deciding the Original Petition in RCOP No.7 of 2010. In short, the application in RCOP No.7 of 2010 shall be decided on merits and as per law uninfluenced by any of the observations made in the order in I.A.No.7 of 2013.

The civil revision petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

23.06.2017

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To
The Principal District Munsif,
Chidambaram.

C.R.P.(P.D.) No. 273 of 2014