



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 717 of 2017
and
CMP (MD) No. 3231 of 2017

1) Ahamed A.K
2) Khairun Nisha Ahamed

... Petitioners/petitioners/
Respondents

vs.

K.S.D. Sivaprasad

... Respondent/Respondent/
Petitioner

Petition filed under Article 227 of the Constitution of India, against the order dated 11.11.2016 passed in I.A.No.324 of 2015 in RCOP.No.172 of 2014 pending on the file of the Principal District Munsif (Rent Controller) Madurai Town.

For Petitioner : Mr.S.Subbiah, Senior Counsel for
Mr.N.Subramanian

For Respondent : Mr.A.L.Kannan for
Mr.VR.Shanmuganathan

ORDER

The revision petitioners are the tenants under the respondent. In the rent control proceedings initiated by the landlord for eviction on the ground of owners occupation, the revision petitioners herein have taken out an application under Section 18-A of the Rent Control Act, for appointment of Advocate Commissioner, for making inspection of the petition mentioned property, on the ground that the petition property was leased out to them permanently in the name of the 1st petitioner in the year 1989 and in favour of the second petitioner in the year 1991.

2.The property leased out to them are distinct and separate. The present physical feature of the property is not the same which was let out in the year 1989 and 1991 to the petitioners respectively. In view of the agreement and understanding between the parties, they have put up permanent structures and structural



changes in respect of the respective leasehold properties and they being perpetual lessees, it is essential to note down the physical features which they have put up in the demised premises. Therefore, appointment of Advocate Commissioner to note down the physical features with the assistance of a qualified Engineer is essential for the Court to ascertain the facts raised by the tenants.

3.The Trial Court, after considering the request for appointing Advocate Commissioner to note down the physical feature, has held that the main petition is filed for eviction, on the ground of owners occupation and to consider the fact in issue, appointment of Advocate Commissioner is not at all necessary, because, the point for consideration is only whether the landlord bonafidely requires the premises for his own occupation or not.

4.The contention that the petitioners are perpetual lessees and the tenancy is irrevocable, cannot be proved through appointing an Advocate Commissioner and by noting down the physical features. Only through documents and conduct of the respective parties, such fact can be proved. Therefore, there is no necessity for appointing Advocate Commissioner to note down the physical features to decide the dispute in land.

5. Aggrieved by the said order, the present revision petition is filed, on the ground that though the petition is filed by the landlord on the ground of owners occupation, still the nature of the structure and the improvement made by the tenants are required to be investigated and determined by the rent controller for appointment of Advocate Commissioner.

6.This Court having given anxious consideration on the plea raised by the revision petitioners, is of the opinion that the very claim of the revision petitioners that they were given lease for the demised premises perpetually as permanent tenants itself, is not borne by any document. Further, nothing been placed on record or pleaded by the revision petitioners that they were permitted to add or alter or modify the physical features of the petition property. While so, even if there is any structural alteration made by the revision petitioners on the demised premises, it has no bearing in the RCOP filed for own occupation.

7.The factum of perpetual lease cannot be ascertained by inspecting the property by the Advocate Commissioner. It has to be proved only through document. The visit of the Advocate Commissioner to the petition premises in the present factual scenario is unwarranted. The rent controller who is dealing with the case has felt that there is no necessity for the Court to take the assistance of the Advocate Commissioner for the litigation in hand, which in the view of this Court is perfectly correct. Therefore, there is no reason to interfere with the order of the Rent Controller.



Hence, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif (Rent Controller)
Madurai Town.

+ 1 CC TO Mr.S.SUBBIAH, ADVOCATE IN SR No. 51332
+ 1 CC TO Mr.V.R.SHANMUGANATHAN, ADVOCATE IN SR No. 51384

NBI

TE/SV : 20/04/2017 : 3P/4C

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