



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.08.2018
DELIVERED ON : 19.09.2018

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.250 of 2015
and
M.P. (MD) No.1 of 2015

Ganesan .. Petitioner/Respondent/Defendant

Vs.

Rajaguru .. Respondent/Petitioner/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.07.2014 passed in I.A.No.590 of 2014 in O.S.No.236 of 2011 on the file of the District Munsif, Pudukottai.

For Petitioner : Mr.B.Jameel Arasu
For Respondent : Mr.K.Bala Sundaram

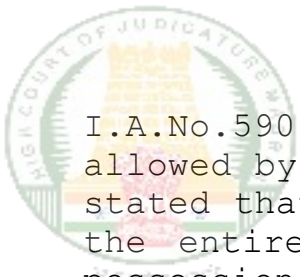
ORDER

Heard Mr.B.Jameel Arasu, learned counsel appearing for the petitioner and Mr.K.Bala Sundaram, learned counsel appearing for the respondent.

2.This petition has been filed to set aside the fair and decreetal order dated 09.07.2014 passed in I.A.No.590 of 2014 in O.S.No.236 of 2011 on the file of the District Munsif, Pudukottai.

3.The petitioner is the defendant in the suit. The respondent herein has filed a suit against the petitioner for permanent injunction in O.S.No.236 of 2011. The respondent filed a petition to amend the prayer in the suit and the same was allowed by the trial Court. Against the order, the petitioner has filed this petition.

4.On the side of the petitioner, it is stated that the respondent is a tenant and he filed a suit for injunction and after a lapse of three years at the stage of arguments, he filed



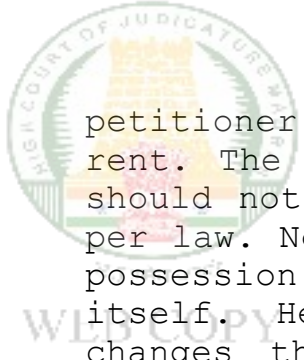
I.A.No.590 of 2014 for recovery of possession and the I.A. was allowed by the trial Court as counter was not filed. It is further stated that if the amendment petition is allowed, the character of the entire case will change. A tenant cannot claim recovery of possession from the landlord.

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5.It is further stated that even before the filing of the suit itself, the respondent has handed over the possession and left the property and the petitioner reconstructed the building. This amendment changes the entire character of the suit. It is further stated that the respondent admitted the ownership of the landlord. In the plaint, it is further stated that there was tenancy agreement in the year 1988 between the petitioner and the respondent and the suit was for injunction not to evict the petitioner without due process of law. The respondent has handed over the possession to the petitioner even before the filing of the suit. But in I.A.No.590 of 2014, it is wrongly stated that on 27.12.2012, the respondent vacated him forcibly. If the petitioner forcibly vacated the respondent and caused damages to his goods on 27.12.2012 itself, there is no necessity for the respondent to wait till two years and to file the I.A. Petition in the year 2016 and prayed the revision petition to be allowed.

6.On the side of the respondent, it is stated that the vacant land was leased out to the respondent and the respondent was doing business selling marbles in the property. When the respondent was taking treatment in the hospital, the petitioner herein break open into the property and caused damages to the property of the respondent. The respondent filed a police complaint but the Police refused to register the FIR. The respondent filed a petition in CrI.O.P.(MD)No.682 of 2013 before this Court and only after the filing of CrI.O.P., the respondent has filed I.A. Petition and prayed to dismiss this petition.

7.Records perused. A perusal of the records reveals that the petitioner is the landlord and the respondent is the tenant and there was a tenancy agreement of the year 1988. A perusal of CrI.O.P.(MD)No.682 of 2013 reveals that the respondent herein filed the Police complaint and the copy of the complaint attached to that petition reveals that the petitioner tried to evict the respondent on 20.09.2011 and the respondent filed a suit in O.S.No.236 of 2011 and subsequent to the suit, again the petitioner has tried to evict the respondent on 29.01.2012. It is not stated that the petitioner has evicted the respondent forcibly. The complaint in the CrI.O.P. It is filed only against an attempt to evict. In the petition filed by the respondent in I.A.No.386 of 2014, it is stated that the respondent was evicted on 27.12.2012. The reason for not filing the I.A. Petition for two years from the date of eviction is not stated in the petition. Even in the written statement filed by the petitioner, it is stated that the respondent has vacated the premises and the



petitioner constructed a terrace building and let out the same for rent. The original case of the respondent is that his possession should not be disturbed without following the proper procedure as per law. Now the respondent want to make amendment for recovery of possession. This entirely changes the character of the suit itself. Hence, in the above circumstances, as the amendment changes the entire character of the suit, the lower Court is incorrect. This Civil Revision Petition is allowed and the order passed by the lower Court is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The District Munsif, Pudukottai.

MRN

TE/SV/SAR-4 : 16/10/2018 : 3P/2C

C.R.P. (PD) (MD) No.250 of 2015
19.09.2018