



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WEB COPY

C.R.P. (PD) (MD) .No.1033 of 2017 and
C.M.P. (MD) Nos.4599 & 6955 of 2017

J.A.Batcha

... Petitioner/Petitioner/
Defendant

Vs.

R.Sumathi

... Respondent/Respondent/
Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.348 of 2016 in O.S.No.468 of 2016, dated 10.02.2017 on the file of the Principal District Munsif Court, Thiruchirappalli, by allowing this Civil Revision petition.

For Petitioner	: Mr.H.Arumugam
For Respondent	: M/s.S.Devasena

O R D E R

The Revision petitioner is the defendant in O.S.No.468 of 2016 on the file of the learned District Munsif, Thiruchirappalli.

2. It is a suit for recovery of possession and arrears of rent. During the pendency of the suit, the Revision petitioner herein filed I.A.No.348 of 2016 for appointing an Advocate Commissioner to note down the physical features and to measure the present exact extent now in rental occupation and possession of the Revision petitioner herein. He also wanted the Advocate Commissioner to file a report with plan. The said Interlocutory application was dismissed by Order dated 10.02.2017. Questioning the same, this Civil Revision petition has been filed.

3. Heard the learned counsel on either side.

4. The learned counsel appearing for the Revision petitioner submitted that the respondent executed a lease agreement in favour of the Revision petitioner on 02.03.2005. As per the said lease recitals, the property leased out measures an extent of 2266 Sq.ft. The learned counsel for the Revision petitioner strongly alleges that there was a forcible dispossession of the Revision petitioner and that he is presently not in occupation of the entire extent that was originally leased out actually. He also highlighted the fact that even in the plaint, the extent of the property in



respect of which recovery of possession was sought only for 1200 Sq.ft. The learned counsel raised a question as to how the plaintiff would be justified in demanding the rental arrears at the rate of Rs.1,600/- per month, when a portion of the leased out property is no longer with the Revision petitioner. He submitted that that is why he wanted the Advocate Commissioner to be appointed to find out the exact extent of his current possession.

5. This Court is unable to agree with the submissions of the learned counsel for the Revision petitioner. As rightly pointed out by the Court below, the Revision petitioner is attempting to gather evidence. In any event, this Court is of the view that appointing an Advocate Commissioner is not going to advance his case actually. The plaintiff sought for recovery of possession of the suit property measuring an extent of only 1200 Sq.ft. If the Revision petitioner had come out with the case that he is in possession of a lesser extent than 1200 Sq.ft, there may be there is something to consider. But, that is not the case presented before me.

6. It is settled law that the Advocate Commissioner cannot be appointed to gather evidence to show one's possession. In this view of the matter, affirming the reasons assigned by the Court below, this Court dismisses the Civil Revision petition.

7. The Civil Revision petition stands dismissed, accordingly. No costs. Consequently, connected Miscellaneous petitions are closed.

sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Principal District Munsif,
Thiruchirappalli.

2. The Record Keeper, V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.H.Arumugam, Advocate SR.No.78344

+1cc to M/s.S.Devasena, Advocate SR.No.78101

Pmu

MK/RSK/SAR 2/10.09.2018/2P/6C