



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.08.2018

CORAM

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P.PD[MD]No.2322 of 2016
and
C.M.P.[MD]No.10713 of 2016

K.Muthu Mohamed : Revision Petitioner/
5th Defendant

Vs.

1. Ummu Salma @ Ummu Salma Beevi : 1st Respondent/Plaintiff
S.Kadar Mydeen (Died)

2.Sulaikal Begum

3.K.Shajahan

4.K.Malik

5.Noorul Jesima

6.Soukarbanu

7.K.Syed Ali Buhari

8.Reihana

9.Madheena

: Respondents / Defendants
2 to 4, 6 to 10

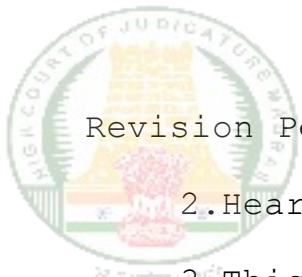
PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside fair and decreetal order passed by the learned District Munsif, Kovilpatti in I.A.No.1208 of 2015 in O.S.No.261 of 2012 dated 20.09.2016.

For Petitioner : Mr.S.M.A.Jinnah

For Respondent No.1 : Mr.R.Vijayakumar

O R D E R

The first respondent herein instituted O.S.No.261 of 2012 for evicting her tenant Kadar Mydeen. During the pendency of the suit, the said Kadar Mydeen passed away. His legal representatives which include the revision petitioner herein came on record. The revision petitioner got himself impleaded as the fifth defendant. The revision petitioner filed his independent written statement. Trial in the suit commenced. The first respondent herein examined herself as P.W.1. Exs.A.1 to A.7 were marked. Thereafter, the first respondent herein / plaintiff filed I.A.No.1208 of 2015, for filing her reply statement. The said Interlocutory Application was allowed by order dated 20.09.2016. The correctness of the said order is under challenge in this Civil



Revision Petition.

2. Heard the learned Counsel on either side.

3. This Court is of the view that no prejudice would be caused on account of the impugned order. Order VIII Rule 9 of the Code of Civil Procedure permits the parties to file their additional pleadings, subsequent to the filing of the written statement, only after getting the leave of the Court unless it was by way of defence to a set-off or counter claim. In the present case, for getting leave of the Court below, the first respondent / plaintiff had filed the present Interlocutory Application for filing her reply statement. The Court below has passed a purely discretionary order. The same does not warrant interference. But then, this Court is of the view that the plaintiff was not justified in characterising the revision petitioner as an encroacher. The tenant who continues to be in possession of the property, even after the expiry of the tenancy has to be called as a tenant holding over. Therefore, this Court directs the first respondent / plaintiff to file a memo withdrawing her characterisation of the revision petitioner as an encroacher. Subject to this direction, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To
The District Munsif,
Kovilpatti.

+1cc to Mr.R.Vijayakumar, Advocate SR.No.77993

+1cc to Mr.S.M.A.Jinnah, Advocate SR.No.78077

Mr

MK/SKN/SAR 2/03.09.2018/2P/4C

ORDER MADE IN
C.R.P. PD [MD] No.2322 of 2016
10.08.2018