



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2018

CORAM :

WEB COPY

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

C.R.P(PD) (MD)No.2687 of 2018

and

C.M.P(MD)No.11797 of 2018

K.Palanimurugan

... Petitioner

vs.

Dakshinamara Nadar Sangam,  
Through its Secretary,  
Having Office at 70, Salai Street,  
Sindupondurai,  
Tirunelveli Junction,  
Tirunelveli District.

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed by the District Munsif Court, Kovilpatti, in I.A.No.170 of 2018 in O.S.No.12 of 2015 dated 05.10.2018.

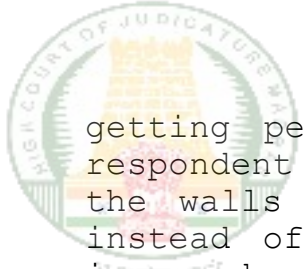
For Petitioner : Mr.N.Tamilmani

ORDER

This revision petition has been filed against the fair and decreetal order passed by the District Munsif Court, Kovilpatti, in I.A.No.170 of 2018 in O.S.No.12 of 2015 dated 05.10.2018.

2.The revision petitioner is the defendant and the respondent is plaintiff in O.S.No.12 of 2015 on the file of the District Munsif Court, Kovilpatti. The said suit was filed for delivery of vacant possession of the suit property and to pay the arrears of rent. Pending suit, the revision petitioner filed an application for appointment of advocate commissioner to inspect and note down the physical features of the suit property and to determine the cost of repair works maintenance work done by him with the help of a qualified Engineer. The said application was dismissed by the Court below, against which, this revision petition is filed.

3.According to the revision petitioner, he is a tenant in the suit property which belongs to the respondent Sangam and he is doing business therein from 2008 and at the time of occupation, the entire Dakshinamara Nadar Sanga Pettai building at Kayathar including the suit property was in a very damaged condition and therefore, after



getting permission and instruction of the past Secretary of the respondent Sangam, the petitioner made repair works and plastered the walls and roofs and put up shed with strong Asbestos sheets instead of damaged tiled shed. According to the petitioner, he incurred expenditure of Rs.10 Lakhs towards repair works and the Secretary of the respondent Sangam assured that he will repay half of the above cost of repairs made by the revision petitioner. In order to prove the quantum of repair works and maintenance of suit property, the petitioner filed the above commissioner application.

4.The respondent/plaintiff resisted application by filing counter contending that the revision petitioner did not pay the monthly rent from May 2014 and therefore, the respondent sent a notice dated 11.12.2014 to the petitioner to terminate the tenancy on 31.12.2014 and to deliver vacant possession and also claimed arrears of rent from May to December 2014. On receipt of the said notice, the petitioner replied on 29.12.2014 stating false allegations regarding arrears of rent and nowhere in the said reply, he has stated that he made repairs works and maintenance of the suit property at the cost of Rs.10 Lakhs with the permission of the Secretary of the respondent Sangam. The respondent denied the allegation of damaged condition of suit property at the time of occupation by the petitioner and also the alleged permission given by the erstwhile Secretary of the Sangam for the above repair works. According to the respondent, at the time of occupation by the petitioner, the suit property belonging to the respondent Sangam was in good condition and that the petitioner did not pay rent from May to December 2014 and damages for use and occupation of the suit property from January 2015 till date.

5.According to the respondent, initially the plea of spending money for repair works and maintenance of the suit property was never raised either in the reply notice or in the written statement filed by the petitioner in the suit and only when the matter was posted for cross examination of PW1, the petitioner filed I.A.No.190/2017 to receive additional written statement raising the new plea of spending money for repair works and maintenance of the suit property without any documentary proof and thereafter filed the present commissioner application only with an intention to protract the proceedings.

6.From the records, it is seen that neither in the written statement nor in the reply notice of the petitioner, it has been stated that the petitioner incurred Rs.10 Lakhs towards repair cost of the suit property and though the petitioner has stated in the present petition that he plastered the walls and roofs of the suit property and put up shed with strong Asbestos sheets instead of damaged tiled, no documentary evidence has been produced to prove the alleged repair of the suit property. Further, there is no counterclaim in the written statement. Therefore, the Court below holding that the petitioner has filed the commissioner application only with an intention to protract the proceedings and the alleged



repair and maintenance works of the suit property can be proved by examining witness and by marking documents in the suit, for which, commission is not necessary, dismissed the commissioner application. In my considered opinion, there is no infirmity in the impugned order passed by the learned Judge.

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

Sd/-

Assistant Registrar(CRL.SIDE)

//True Copy//

Sub Assistant Registrar(CS-I)

To

The District Munsif,  
Kovilpatti.

+1cc to Mr.N.Tamilmani, Advocate Sr.No.99131

BALA

KM/SV/SAR1/27.12.2018/3P/3C

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