



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP(MD) (PD) No.982 of 2013
and
MP(MD) No.1 of 2013

Ponnuchamy ... Petitioner/Petitioner/Defendant
vs.
Sethu Thevar ... Respondent/Respondent/Plaintiff

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 15.03.2013 passed in I.A.No.127 of 2012 in O.S.No.185 of 2010, now pending on the file of the District Munsif of Virudhunagar by allowing this Civil Revision Petition.

For Petitioner : M/s.Jessy Jeeva Priya for
N.Subramanian
For Respondent : Mr.K.Sekar

ORDER

The respondent herein filed the original suit for ejectment and for arrears of rent to the tune of Rs.10,800/- from the petitioner / defendant. Though it is admitted that the suit property originally belonged to the defendant and others, it is stated that the same was purchased by the plaintiff from the defendant, his parents and the defendant's brother by virtue of registered sale deed dated 06.09.1999, for a sum of Rs.60,000/-. It is further stated that the property was let out to the defendant for a monthly rent of Rs.300/-. Alleging that the defendant has not paid the rent for more than 3 years and that a sum of Rs.10,800/- is due to the plaintiff by way of arrears of rent, it is stated that the plaintiff was constrained to file the suit after sending notice terminating tenancy.

2.Of course, in the suit, apart from the other grounds, the petitioner / defendant disputed the description of the property with reference to the boundaries. Citing the stand taken in the written statement an application came to be filed by the defendant in I.A.No.127 of 2012, during the pendency of the suit for appointment of an Advocate Commissioner to inspect the suit property and file a report along with physical features of the suit property. The said application was dismissed by the trial Court, holding that the



appointment of Advocate Commissioner is not necessary as the dispute is not in relation to identity of the suit property. The trial Court further held that it is not permissible to appoint the Advocate Commissioner to collect evidence as the plaintiff has to prove his case with reference to his long physical possession of the suit property. It is a well accepted position that the Advocate Commissioner cannot be appointed for the purpose of collecting evidence and the Court cannot appoint for the purpose of fishing evidence. Hence, the trial Court has rightly dismissed the said application. Against the same, the defendant has preferred the present civil revision petition.

3.No doubt, it is true that the petitioner has raised a defence with regard to the identity of the suit property. It is to be noted that the suit filed by the respondent / land lord is for ejectment. The petitioner has disputed the tenancy apart from raising the objection with regard to the identity of the suit property. It is to be noted that the petitioner's purpose to seek appointment of Advocate Commissioner is only to identify the physical features in the suit property. It is stated that for better appreciation of facts, it is important to note down physical features. In a suit for eviction, there is no necessity to consider the physical features, particularly, when no issue is raised in the pleading.

4.From the plaint itself, it can be seen that the suit property has been described as a building bearing Door.No.49. The measurements and four boundaries are given to the property. Hence, the contention that the suit property has not been properly described, is not factually correct. Secondly, petition for appointment of Advocate Commissioner cannot be allowed by mere asking. The Court should record the reasons before appointing the Advocate Commissioner. It is the duty of the plaintiff to prove that the description of the property is correct. The objections regarding identity of the property does not come in the way. The present suit is for ejectment and the commissioner's appointment will be necessary, only if the petitioner / defendant is able to point out that the local inspection of the Advocate Commissioner is required for the purpose of elucidating some important matter, which is in dispute.

5.The petitioner in this case is not able to convince this Court that the Advocate Commissioner in this case is necessary for the Court to resolve the dispute effectively. Having regard to the position that lower Court has analyzed the entire facts and dismissed the application, this Court has no reason to interfere with the findings of the trial Court particularly, in the light of the observations made above.

6.As a result, the civil revision petition is dismissed and the order passed by the District Munsif Court, Virudhunagar, in



I.A.No.127 of 2012 in O.S.No.185 of 2010, dated 15.03.2013 is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Virudhunagar.

Copy to:
The Record Keeper,
VR Section, Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.K.SEKAR, Advocate, SR.No.60944
+1cc to Mr.N.SUBRAMANIAN, Advocate, SR.No. 60943

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MM
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