

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.12.2019

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRP.(PD).No.970 of 2015

and

M.P.No.1 of 2015

Md. Shoukath

... Petitioner

Versus

1. Md. Ishrath (deceased)

2. Mrs. Azra

3. Md. Raffath

4. Mrs. Durdana

5. Khadi Gramodyog Bhavan,
rep. by its Secretary,
844, Anna Salai,
Chennai 600 002.

6. Md. Hasmath

... Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order dated 07.02.2015 made in M.P.No.788 of 2014 in RCOP No.1942 of 2003 on the file of the XI Court of Small Causes, Chennai.

For petitioner : Mr. V. Shanmugam
For respondents : Mr. S.Sivashanmugam,
for R5
: R1 to R4 given up
: R6- No appearance

ORDER

This Civil Revision Petition has been filed against the order dismissing the petitioner's application to appoint an Advocate Commissioner to inspect the premises and measure the constructed area in the second floor and file a report.

2. According to the petitioner, the fifth respondent is in possession of the property from the year 1957. Earlier, on the application filed by the petitioner's father, a fair rent was fixed in the year 1980. Subsequently, he has made additional construction in the second floor and the fifth respondent/tenant is in occupation of the second floor.

3. In the above circumstances, the petitioner and other landlords filed RCOP No.1942 of 2003 on the file of the XI Small Causes Court, Chennai, under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 for fixing fair rent. In the above RCOP, the petitioner and other landlords, filed a petition in M.P.No.788 of 2014 to appoint an Advocate Commissioner to inspect

the suit property and measure the construction alleged to have been put up by them in the second floor. The petitioner herein was examined as P.W.1 and he has also examined the Engineer/Contractor as P.W.2 to establish that some additional constructions had been made in the second floor. However, the fifth respondent disputed the above allegations on the ground that no additional construction has been put up and except the oral evidence of PW.1 and P.W.2, absolutely there is no documentary evidence to show that the petitioner and other landlords have put up additional construction. He further submits that the Commissioner cannot be appointed for collecting evidence as to whether the additional construction has been put up or not.

4. The trial Court, by an order dated 07.02.2015, dismissed the application holding that Commissioner cannot be appointed for the purpose of collecting evidence. Now, challenging the same, the present revision has been filed.

5. The learned counsel for the petitioner would submit that the petitioner has sought for fixation of fair rent. The petitioner has put up additional construction and he examined himself as P.W.1 and the Engineer, who made additional construction, was examined as P.W.2. The fifth respondent is disputing the additional constructions, it is just

and necessary to appoint an Advocate Commissioner to report as to whether any additional construction has been put up by him and what is the extent of the additional construction made. The learned counsel would further submit that it does not amount to collection of evidence and the trial Court erroneously dismissed the same.

6. Per contra, the learned counsel appearing for the fifth respondent would submit that absolutely there is no material available on record to show that the petitioner has put up additional construction except the oral evidence of P.W.1 and P.W.2 . It is also settled law that the Commissioner cannot be appointed to collect the evidence, if at all the petitioner has any grievance, it is for him to prove the same. The trial Court, considered the same, and rightly dismissed the application.

7. I have considered the rival submissions and perused the materials available on records carefully.

8. According to the petitioner/landlord, earlier application has been filed for fixing the fair rent. Thereafter, some additional constructions had been made and the fifth respondent/tenant is also paying rent for the same, which was disputed by the fifth respondent/tenant. In the above circumstances, the petitioner filed the present application seeking direction to appoint an Advocate

Commissioner to inspect and measure the additional constructions made in the second floor.

9. To substantiate his contention, the petitioner has examined himself as P.W.1 and the Engineer was examined as P.W.2. He categorically stated that the additional construction has been put up by the petitioner, however, there is no documentary evidence to prove the same. However, the said fact was disputed by the fifth respondent. When the petitioner content that additional construction has been put up and also let in oral evidence to that extent, it is necessary to establish the same by appointing an Advocate Commissioner to inspect the property and measure the premises and to find out whether any additional construction has been made and to what extent. In the event the Advocate Commissioner reports that there is no additional construction, then the petitioner cannot maintain the petition itself, and it is only an advantage to the fifth respondent/tenant, and no prejudice is caused to him. The Court below without considering all the aspects, simply dismissed the application stating that Advocate Commissioner cannot be appointed for collecting evidence. Considering the fact and circumstances, I am of the considered view that the order passed by the Court below is erroneous and it is liable to be set aside.

10. Accordingly, the Civil Revision Petition is allowed and the order passed by the Court below is set-aside and the Court below is directed to appoint an Advocate Commissioner to inspect the property and file a report and after filing of such report, the trial Court is directed to proceed with the RCOP. If the fifth respondent has any grievance over report filed by the Advocate Commissioner, it is always open to him to file his objection. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2019

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order
mrp

To
The XI Small Causes Court,
Chennai

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