

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD)No.4186 of 2013
and M.P.No.1 of 2013

P.L.Arunachalam

..

Petitioner

versus

1.D.M.K.Retail Flower Shop,
Represented by its Proprietor,
A.Mani,
Son of Alagarsamy,
No.15, Ground Floor,
Badrian Street,
Chennai - 600 001.

2.S.M.Ganesan

Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 23.08.2013 made in I.A.No.10775 of 2013 in O.S.No.5614 of 2012 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner
For Respondent No.1
For Respondent No.2

: Mr.R.Thiagarajan
: Mr.K.Shivakumar
: Not ready in notice

ORDER

This Civil Revision Petition has been filed as against the order of the trial Court in appointing the Advocate Commissioner to note down the physical features of the suit property.

2. The suit has been originally filed by the first respondent, who is the plaintiff, for permanent injunction restraining the first defendant not to be vacated from the premises except by due process of law. In the suit, it is stated that he was inducted the premises as a tenant and he has been paying the rents to the second defendant, who has authorized the first defendant to receive the rents.

3. It is curious to note that in the plaint there is no whisper as to the date in which the tenancy has commenced. Be that as it may. He has filed an application to appoint an Advocate Commissioner to find out, who is in possession besides physical features of the suit property. The trial Court in its cryptic order dated 23.08.2013 has allowed the application, which has been challenged in this revision.

4. Heard the learned counsel appearing for the revision petitioner as well as the learned counsel appearing for the first respondent.

5. The suit has been filed for limited prayer contending that he is a tenant of the first respondent and seeking injunction not to be vacated except by due process of law whereas the specific stand of the first defendant that there is no relationship of landlord and tenant, the property has already been mortgaged to the third party and the plaintiff has never in possession of the property. It is also to be noted in the plaint when the plaintiff was inducted as a tenant has not been pleaded. Be that as it may. The plaintiff has to establish not only his possession but also the legal relationship, he cannot gather the evidence through the Advocate Commissioner.

6. It is well settled that the Advocate Commissioner cannot be appointed to gather the evidence of the parties, once the plaintiff has come before the Court as a tenant, it is for him to establish the Jural relationship not by the Advocate Commissioner. The trial Court in its cryptic order without deciding the petition on merits, simply allowed the application. Hence, the order of the trial Court passed in I.A.No.10775 of 2013 in O.S.No.5614 of 2012 dated 23.08.2013 is hereby set aside.

7. With these observations, the Civil Revision Petition is allowed.

However, the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

22.03.2019

Speaking Order / Non Speaking Order

Index : Yes / No

Internet : Yes

sri



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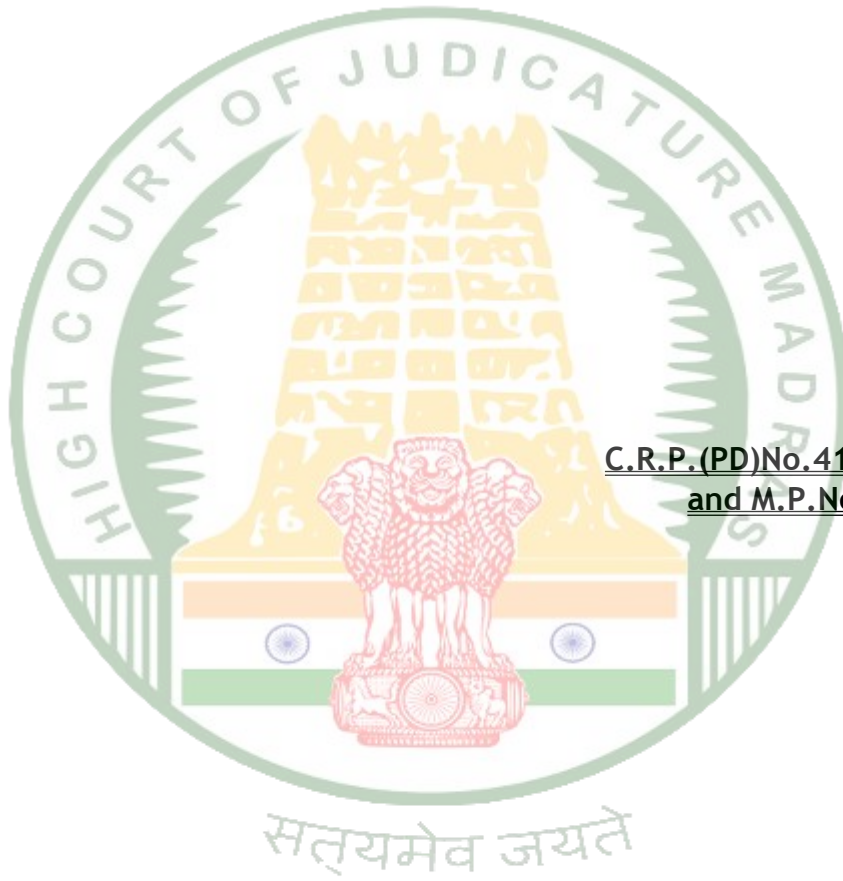
To

The XV Assistant Judge,
City Civil Court, Chennai.



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N.SATHISH KUMAR, J.,
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