

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE P.T. ASHA

C.R.P. (PD) No.1601 of 2019

and

CMP No.10574 of 2019

A. Abdul Gaffoor

...

Petitioner

Vs.

1. J. Shafeeka

2. Huzaima Rifai

3. Shahima Rifai

...

Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 14.03.2019 passed by the learned XI, Judge, (FAC), X Small Causes Court, Chennai in M.P. No.56 of 2019 in R.C.O.P. No.1537 of 2016.

For Petitioner : Mr.Inamdar Ameenur Rahman

सत्यमेव जयते

ORDER

The above Civil Revision Petition is filed challenging the order passed by the learned XI Judge, X Small Causes Court, Chennai in MP No. 56 of 2019 in RCOP No.1537 of 2016, in and by which the learned judge has dismissed the application moved by the revision petitioner / tenant for appointing an Advocate Commissioner to note down the

physical features of the demised premises and to state the number of floors existing. In the affidavit filed in support of the said application, the tenant would state as follows :

3. I submit that the petitioner has only shown ground and first floor in the petition premises and has not disclosed about the third floor in the petition premises and deliberately the Engineer for the petitioner has also given a report without disclosing about the third floor in the petition premises and even with respect to the physical features of the petition premises, the petitioner's Engineer has given a report without disclosing the correct physical features in the property. Further the Peititoner has given a false measurement with respect to the area in my possession and even their engineer has filed a report with improper measurements and hence it becomes in the interest of justice to appoint a Advocate - Commissioner to note the physical features and measure in the interest of justice.

Therefore, it is for this reason that the petitioner has sought for the appointment of an Advocate Commissioner.

2. The statement made by the tenant was refuted by the landlord, who would contend that the Engineers on either side have let in their evidence and have also been extensively cross examined and,

therefore, there is no necessity to have the Advocate Commissioner appointed. The landlord would also contend that there is no third floor in the said premises and the petition premises consists of only ground and two floors that have been marked and noted by the Engineers and, therefore, there is no necessity to appoint an Advocate Commissioner to inspect the said property.

3. After enquiry, the learned Rent Controller was pleased to dismiss the said application on the ground that the Engineers on either side have been examined and further the appointment of the Advocate Commissioner would in no way enlighten the Court more than that of the witness of the Engineers report. He further held that if this application is allowed, no timely justice would be rendered.

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4. Heard Mr Inamdar Ameenur Rahman, learned counsel for the petitioner, who would argue that the two Engineers have given conflicting reports and, therefore, there is a necessity for an independent report and

that can be achieved only by appointing an Advocate Commissioner. He would also contend that the Engineers have given different versions with reference to the number of floors existing in the demised premises and, therefore, there is necessity for the appointment of the Advocate Commissioner to assist the Court.

5. Heard the learned counsels and perused the records.

6. From the two reports of the Engineers viz., the Engineer on the side of the landlord and the Engineer on the side of the tenant, it is clear that both of them have given the reports that the demised property consists of ground as well as two floors. The difference is only in the manner of calculation, for which, in my considered opinion, there is no necessity to have an Advocate Commissioner appointed. Therefore, in my considered opinion, the learned Judge / Rent Controller has rightly dismissed the said application.

7. I do not any infirmity in the order passed by the learned XI Judge, (FAC), X Small Causes Court, Chennai. Hence, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed. It is open to the parties to produce such evidence as required, to show the number of floors that exist in the building.

27.04.2019

Internet: Yes/No

Index: Yes/No

Speaking order/Non-speaking order
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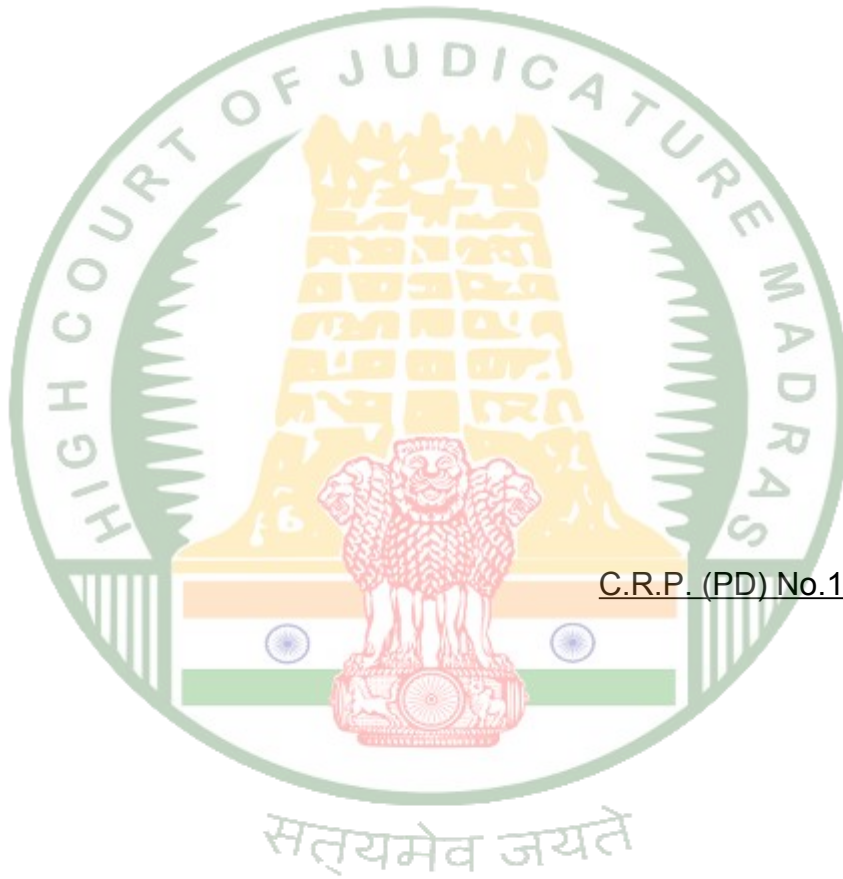
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P.T.Asha, J.

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To

The XI Judge, (FAC), X Small Causes Court, Chennai



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