

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.3550 of 2018

and

CMP.No.19868 of 2018

A.Mohan Kumar

..Petitioner/Tenant

Vs

S.Thirugnanamurthy

...Respondent/Landlord

This Civil Revision Petition filed under Article 227 of the Constitution of India to to set aside the fair and decreetal order dated 23.07.2018 passed by the learned VIII Judge, Court of Small Causes, Chennai, in M.P.No. 369 of 2017 in RCA.No.584 of 2015, confirming the order dated 30.09.2015 passed in RCOP.No.1751 of 2012, on the file of the learned XV Judge, Court of Small Causes, Chennai and allow the above Civil Revision Petition by appointing advocate commissioner.

For Petitioner : Mr.K.P.Ashok

For Respondent : Mr.E.J.Ayyappan

O R D E R

The above Civil Revision Petition is filed challenging the order of the learned VIII Judge, Small Causes Court, Chennai (the learned Rent Control Appellate Authority) in M.P.No. 369 of 2017 in RCA.No.584 of 2015, which is an application filed by the appellant/tenant for appointing of an Advocate Commissioner to inspect the petition premises to note down the physical features, age of the premises and measurements.

2 The brief facts which are necessary to dispose of the above petition are as follows:

The respondent/landlord had filed petition for evicting the revision petitioner on the ground of willful default in payment of the monthly rent. The specific averments that have been made in the Rent Control Petition is that the revision petitioner has been permitted to run a Tea Stall under the staircase in the ground floor of the building on a monthly rent of Rs. 5,000/-. Thereafter, the petitioner has extended his shop onto a vacant area in the front of the premises and blocked the access to the staircase as well as cut off the access to the meter box in the premises. The specific case of the landlord is

that by putting up this illegal construction, viz; the construction in the open place and including staircase area, the revision petitioner has caused nuisance and further the revision petitioner has also placed gas stove and cylinder close to the electricity board meters endangering the safety of the premises.

3 In the cross-examination, the revision petitioner has admitted that he has been put in possession only of the portion which is under the staircase and he has also admitted to the fact that he has extended his tea shop to the vacant site. The learned Rent Control Appellate Authority has dismissed the application filed for appointing of an Advocate commissioner on the premise that the same would amount to collection of the evidence and therefore, the same cannot be allowed.

4 Considering the averments made in the eviction petition, the learned Judge ought to have allowed the appointment of the Advocate Commissioner to inspect the premises in question and note down the areas which are actually in the occupation of the revision petitioner/tenant and also the fact as to whether he has made the staircase portion inaccessible and he has also placed his cooking materials close to the electricity board. This exercise would definitely enable the Court to come to a fair decision.

5 The order passed by the learned Appellate Authority is therefore set aside and the Appellate Authority is directed to appoint an Advocate Commissioner to note down the area in which the revision petitioner is now in occupation and find out whether, the staircase has been made inaccessible and as to whether, the revision petitioner has caused any hindrance endangering the safety of the premises by having his kitchen close to the electricity board meters and submit the report within a period of three weeks from the date of issue of warrant. The learned Appellate Authority is directed to issue the warrant to the Advocate Commissioner within a period of one week for the date of receipt or production of the order copy.

6 In the result, the Civil revision Petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Insp Cell)

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Sub Assistant Registrar

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To

1.The VIII Judge,
Court of Small Causes,
Chennai.

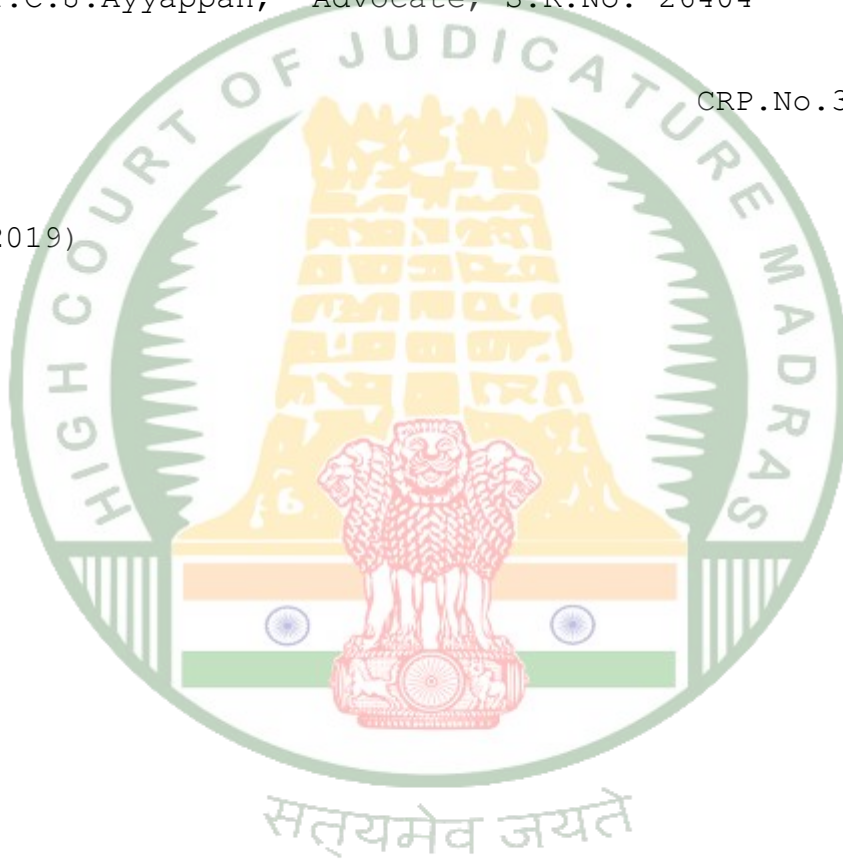
2.The XV Judge,
Court of Small Causes,
Chennai.

+1cc to Mr.K.P.Ashok, Advocate, S.R.No.26653

+1cc to Mr.C.J.Ayyappan, Advocate, S.R.No. 26404

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KK (CO)
GN(30/05/2019)



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