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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) Nos.819 and 823 of 2019

and

CMP (MD) Nos.4979 and 4983 of 2019

CRP.819/2019:-

S.N.Ponraj

... Petitioner

vs.

Kumaran @ Vaidyanathan

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and executable order passed in I.A.No.118 of 2016 in RCOP.No.31 of 2013 dated 05.03.2019 on the file of the Additional District Munsif Court, (Rent Controller) Madurai Town.

For Petitioner : Mr.K.P.Thiyagarajan

CRP.823/2019:-

K.R.Srinivasan

... Petitioner

vs.

M.S.Senthil @ Viswanathan

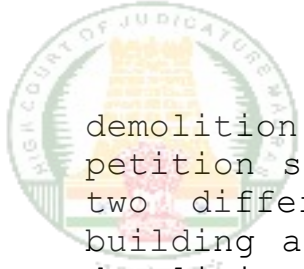
... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and executable order passed in I.A.No.119 of 2016 in RCOP.No.33 of 2013 dated 05.03.2019 on the file of the Additional District Munsif Court, (Rent Controller) Madurai Town.

For Petitioner : Mr.K.P.Thiyagarajan

COMMON ORDER

The present revision petitions have been filed against the orders dated 05.03.2019 dismissing I.A.Nos.118 and 119 of 2016 to pass an order relating to the maintainability of the main RCOP.Nos.31 and 33 of 2013 as a preliminary issue.



demolition and reconstruction. According to the petitioners, the petition schedule property consists of three separate portions in two different door numbers and three tenancy in the entire building and therefore, the respondents cannot file petitions for demolition and reconstruction as the entire property is not owned by the respondent in each case absolutely and the entire property including the schedule property is one and the same roof as the respondents who are brothers also jointly occupying the entire first floor as co-owner. According to the petitioners, the claim is not a bona fide one and when there are two owners, one owner alone cannot maintain a petition.

3.The grievance of the petitioners is that the landlords have filed RCOPs for eviction on imaginary and false grounds in RCOP.Nos.335 and 335 of 2004 which were dismissed against which, the respondents preferred appeal before the Principal Subordinate Judge, Madurai in RCA.Nos.83 and 84 of 2010 and the same are still pending. The main allegation is that the respondents who are brothers, are jointly occupying petition schedule property as co-owners and therefore the claim of the respondents for demolition and reconstruction is not bonafide. Therefore, the petitioners would state that the present petitions for demolition and reconstruction has to be decided on the maintainability as a preliminary issue.

4.According to the respondents, the petitioners are tenants and the respondents filed separate petitions in RCOP.Nos.31 and 33 of 2013 and according to them, the petitioners have filed the present applications only to drag on the proceedings.

5.The petitioners relied on a judgment of the Apex Court in 2007 5 CTC 277 Chinniyan vs. Kasthuri and others, that eviction petitions are not maintainable if there is non joinder of parties who claim title over the property and the learned Judge finding that the above judgment is not applicable to the present facts and circumstances as in the present case, co-owners are having separate title deeds and also filed separate petitions in RCOP.Nos.31 and 33 of 2013 against their respective tenant, rejected the contentions of the petitioners. It is an admitted fact that the petitioners are the tenants and the respondents are the landlords. The respondents who are brothers are jointly enjoying the petition schedule property under two title deeds and both of them have filed separate petitions against their tenant on the ground of demolition and reconstruction and therefore, finding that the allegation of the petitioners was not acceptable one and further, the bonafide of the landlords for demolition and reconstruction could be decided only after considering both side oral and documentary evidence, dismissed the applications where I do not find any infirmity.



Accordingly, these Civil Revision Petitions are dismissed. no costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Additional District Munsif,
Rent Controller,
Madurai Town.

+CC TO M/S.K.P.THIYAGARAJAN, ADVOCATE, SR.NO.68415

C.R.P (PD) (MD) Nos.819 and 823 of 2019
12.06.2019

BUC (28/06/2019) 3P/3C