



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) No.2358 of 2014

and

C.M.P. (MD) No.11587 of 2017

A.Thandayuthapani

... Petitioner

Vs.

1.The Commissioner,

Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

2.The Assistant Commissioner, Ariyamangalam Division,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

3.P.Palaniappan

..Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set-aside the fair and decreetal order passed in I.A.No.58 of 2014 in O.S.No.168 of 2013 on the file of the II Additional District Judge of Tiruchirappalli dated 10.04.2014.

For Petitioner : Mr.S.Jawahar

For R1 and R2 : Mr.N.S.Karthikeyan

For R3 : No Appearance

ORDER

This revision petition is filed by the plaintiff in the suit in O.S.No.58 of 2014 on the file of the II Additional District Judge, Tiruchirappalli.

2. The revision petitioner filed the said suit for declaration to declare that he is entitled for the benefit of G.O.Ms.No.92, Municipal Administration and Water Supply Department, dated 03.07.2007 and also to declare that the action of the second respondent in locking and sealing the suit property on 06.06.2011 is illegal and consequently to direct the respondents to restore possession of the suit property to the petitioner. The suit is also for a direction to the respondents / defendants to pay a sum of Rs.20,00,000/- towards value of loss of goods and materials stored inside the suit property. The suit property is described as shop bearing No.38 at Diamond Jubilee Building Shopping Complex, Tiruchirappalli within corporation limits.

3. It is the case of the revision petitioner that Shop No.38 namely the suit property is owned by the Trichirappalli Corporation and the said shop was orally leased out to the third defendant in

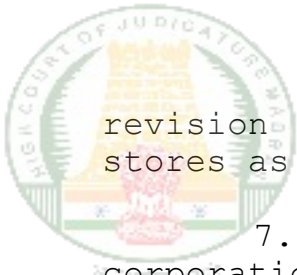


the suit. It is further stated that the third defendant, the original lessee, has subleased the shop in favour of the revision petitioner for carrying on business even from the year 1998 under the name and style of M/s. Karunambigai Traders.

4. The sum and substance of the allegation is that the premises, wherein the plaintiff was carrying of business, was locked and sealed by the respondent corporation, without authority with the connivance of third defendant to help the third defendant to take possession. However, the defence taken by the respondents in the written statement is that there is no shop Bearing No.38. However, it was stated that the third defendant was given lease in respect of Shop No.4 situated in the upstairs at Diamond Jubilee Building as lessee by paying monthly rent at Rs.2,000/-. During the pendency of the suit, a Commissioner was appointed to note down the physical features and he pointed out that Shop No.38 is not in existence. However, he referred to the position that adjacent to Shop No.37 there is a shop but it bears no door number. Pursuant to the Commissioner's report, the revision petitioner filed a petition for amendment of plaint to amend the description of the property by giving four boundaries to the property. This petition was opposed by the respondents once again on the same ground that there is no shop bearing No.38 and that the shop No.4 alone was leased out in favour of the third respondent.

5. The trial Court dismissed the petition mainly relying upon the Advocate Commissioner's report, wherein, he has specifically mentioned that no such shop bearing door No.38 as described by the revision petitioner could be identified. Though the shop adjacent to the shop No.37 was referred to by the Advocate Commissioner as disputed property, the trial Court has held that the revision petitioner cannot pick out evidence from Court to prove that shop No.38 is in existence. The trial Court further held that the petitioner has not stated sufficient reasons as to why an amendment is required for further description of the suit property. Aggrieved by the order passed by the lower Court, the present civil revision petition is preferred by the plaintiff.

6. The brief facts submitted by the revision petitioner in the plaint, commissioner's report and the stand taken by the respondent in the written statement reveals that the dispute is regarding a shop, which is adjacent to shop No.37 and regarding the possession and enjoyment or right in respect of a particular shop. The dispute is not regarding the identity of the property. Though the petitioner has described the suit property as a shop bearing Door No.38, the fact remains that the commissioner has found that shop No.38 is not available. The plaintiff has to substantiate the case by giving further description of the property, so that the suit can be decided effectively. It is also relevant to mention that the revision petitioner has given property tax receipt in respect of Shop No.38 in the Dimond Jubilee building. Shop No.38 has been assessed in the name of Sri Karunambika Traders. The



revision petitioner has specifically referred to Sri Karunambika stores as shop in which name he is carrying of business.

7. In such circumstances the contention of the respondent corporation that the Shop No.38 is not in existence may not be correct. The scope of amendment is only to give further description of the property already described in the plaint. Merely because of shop number is not properly given he cannot state that the shop is not in existence and has taken a stand without any *bona fides*.

8. In this circumstances, this Court is inclined to set aside the order passed by the lower Court dismissing the petition for amendment of I.A.No.50 of 2016. The petitioner has properly explained the reasons for amendment and I.A.No.50 of 2016 stands allowed. It is also open to the respondents to file written statement, if they have any dispute regarding the identity of the property.

9. With the above observation, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The II Additional District Judge, Tiruchirappalli

2.The Commissioner,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

3.The Assistant Commissioner, Ariyamangalam Division,
Tiruchirappalli City Municipal Corporation,
Tiruchirappalli.

+1CC TO MR.S.JAWAHAR, Advocate Sr. No. 48261

+1CC TO MR.N.S.KARTHIKEYAN, Advocate Sr. No.47597

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KMR (CO)

TR (08.05.2019) 3P 6C

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