



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED: 17.06.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**  
C.R.P (NPD) (MD) No.519 of 2011

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V.M.Sheik Noordeen : Petitioner/Petitioner/Landlord

.. Vs ..

V.M.Umarul Farook : Respondent/Respondent/Tenant

**PRAYER:** Civil Revision Petition is filed under Article 227 of Constitution of India, praying to set aside the order and decretal order made in I.A.No.77 of 2010 in R.C.O.P.No.24 of 2000, dated 30.09.2010 on the file of 1<sup>st</sup> Additional Rent Controller, Tirunelveli (I Additional District Munsif, Tirunelveli).

For Petitioner : Mr.V.M.Balamohan Thambi

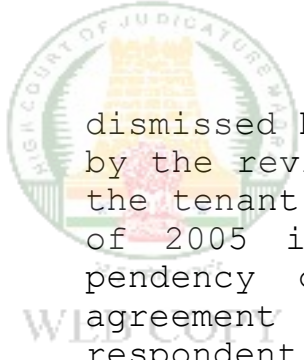
For respondent : Mr.D.Nallathambi

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### ORDER

This Civil Revision Petition is directed against the order passed by the learned Rent Controller dismissing the petition filed by the revision petitioner under Order 23, Rule 1 C.P.C. to withdraw R.C.O.P.No.24 of 2000 and to permit the petitioner to file a fresh petition on the same cause of action.

2.The revision petitioner, claiming to be the landlord, filed a petition in R.C.O.P.No.24 of 2000 before the Rent Controller, I Additional District Munsif, Tirunelveli, for evicting the respondent from the demised premises, namely, Door No.120, Sappani Alim West Street, Melapalayam, Palayamkottai Taluk. The eviction was sought for on the ground of willful default and denial of title which according to the revision petitioner is unlawful and lacking *bona fide*. It is stated that the tenant/respondent has committed willful default in payment of rent from December, 1998 to January, 2000 for fourteen months. The Rent Control Original Petition was filed in 2000. Ten years later, the petitioner has filed the petition to withdraw the proceedings and to file a fresh petition on the same cause of action after the dismissal of O.S.No.571 of 2001. In the affidavit filed in support of the petition, it is stated that the revision petitioner has earlier filed O.S.No.571 of 2001 on the file of the District Munsif Court, Tirunelveli, for declaration of his title. It is further stated that though the said suit was



dismissed by the trial Court on technical grounds, on appeal filed by the revision petitioner, the suit came to be decreed as against the tenant. It is further stated that second appeal in S.A.No.819 of 2005 is pending before this Court. Having regard to the pendency of the second appeal and the fact that the lease agreement alleged to have been executed by the father of the respondent dated 27.03.1998 was misplaced, the above petition is filed. This petition was dismissed by the lower Court after holding that unless the revision petitioner shows special circumstances, permission cannot be granted to file fresh petition on the same cause of action. Though the petitioner was permitted to withdraw the proceeding, the lower Court refused to grant liberty to the petitioner to file a fresh petition on the same cause of action. Aggrieved by the same, the landlord has filed the the above Civil Revision Petition.

3.The learned Counsel appearing for the petitioner states that the original lease agreement which was referred to the District Collector for collecting stamp duty and penalty was misplaced in the Collector's Office and that the petitioner may not be able to prosecute the petition for eviction without the document. It is further stated that the Civil Suit has been decreed in his favour by the lower appellate Court and that the second appeal has been filed by the respondent. It was therefore submitted that the revision petitioner has established his title before the Civil Court and that he will be put into trouble and unnecessary hardships by the respondent/tenant.

4.There is no difficulty for the revision petitioner to file a fresh petition for eviction if the cause of action is different. The permission to withdraw the rent control petition or the suit can be filed only if the plaintiff/petitioner is prepared to abandon the suit. In case the petitioner seeks to preserve his right to file a fresh petition or suit on the same cause of action, it is open to him to file a petition only if he satisfies the requirements under Order 23, Rule 1(3) of C.P.C. This is not a case where the petitioner seeks to withdraw because there is a formal defect in the petition filed by him earlier. It is not the case of the revision petitioner that there are sufficient or special circumstances existing in this case to prosecute a fresh petition on the same cause of action. Admittedly, the petitioner has filed a petition for eviction by stating that he is a landlord. Even according to him, the Civil Court has declared his right as per the decree of the lower appellate Court. Till the second appeal is disposed of the petitioner may not be facing a situation as apprehended by him as the civil court's decree declaring his title is in force even according to him. For want of proof to establish jural relationship, liberty cannot be given to the petitioner to file a fresh petition on the same cause of action. This Court is also of the view that the petition filed by the revision petitioner is unnecessary and absolutely no reason to interfere



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with the order of the lower Court. Hence, this Civil Revision  
Petition is dismissed. No costs.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS )

SRM

To

The I Additional District Munsif,  
I Additional Rent Controller,  
Tirunelveli.

+1cc to M/S.V.M.Bala Mohan Thampi, Advocate, Sr.No.69855  
+1cc to M/S.D.Nallathambi, Advocate, Sr.No.69400

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