

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.NO.3498 OF 2018

AND

C.M.P.NO.19614 OF 2018

Thomas Jacob

.. Petitioner/Petitioner

Vs.

G.Anwar Badsha

.. Respondent/Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 31.07.2018 made in I.A.No.605 of 2018 in O.S.No.435 of 2014 on the file of the Principal District Munsif Court, Poonamallee at Thiruvallur and allow this Civil Revision Petition.

For Petitioner : Mr.K.P.Gopalakrishnan

For Respondent : Mr.R.Karthikeyan

ORDER

This matter is taken up for hearing through Video-Conferencing.

2. The defendant in O.S.No.435 of 2014 has come up with this Revision, aggrieved by the order made in I.A.No.605 of 2018, which is an application for appointment of Commissioner to note down the physical features and file a report.

3. The suit is filed by the plaintiff, who is the owner of the property and he seeks vacant possession of the suit property from the defendant who according to him had taken the property on lease. The suit is being defended claiming that the defendant has put up construction measuring about 250 sq.f. and he had obtained electricity connection. It appears that there had been earlier proceedings in O.S.No.156 of 2011.

4. The application for appointment of commissioner was filed in the year 2018 claiming that the defendant should be allowed to place the physical features of the property before the court and that can be done only by appointing a Commissioner. The application was resisted by the plaintiff contending that this is nothing but attempting to delay the suit. The trial court rightly rejected the application on the ground that in a suit for possession of the property and in the absence of any dispute regarding identity, no Commissioner need to be appointed.

5. I have heard Mr.K.P.Gopapakrishnan, learned counsel for the petitioner and Mr.R.Karthikeyan, learned counsel for the respondent.

6. Mr.K.P.Gopalakrishnan, learned counsel appearing for the petitioner would vehemently contend that there is a dispute regarding the extent of construction put up by the petitioner in the suit property. Therefore, the commissioner is necessary.

7. I am unable to countenance the said submission of the counsel for petitioner. When the lease is admitted and the title of the plaintiff to the land is admitted there is no question of appointment of commissioner to note down the physical features or to ascertain the extent of construction. Whatever the construction put up by the tenant has to be removed if the suit is decreed.

8. I therefore do not find any illegality or irregularity in the order of the trial court. Hence, the Civil Revision Petition fails and is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dsa

To

The Principal District Munsif Court,
Poonamallee, Thiruvallur.

C.R.P.No.3498 of 2018

RLD(CO)
CS/18/01/2021