



C.R.P.(NPD)No.1009 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1009 of 2016
and C.M.P.No.5663 of 2016

S.Govindaraj

.. Petitioner

Vs.

1.J.M.Fathima Dilsath Parveen

Represented by her power agent

Hajima Begum

2.Muthukumar

3.Yoganathan

4.Sargunam

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.11.2015 in E.A.No.11 of 2015 in E.A.No.105 of 2014 in E.P.No.5 of 2014 in R.C.O.P.No.23 of 2004 on the file of the District Munsif Court, Mannargudi.



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For Petitioner : Ms.P.Vidhya Shree
for Ms.P.T.Ramadevi
For R1 : No appearance
For R2 and R4 : No appearance

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 18.11.2015 in E.A.No.11 of 2015 in E.A.No.105 of 2014 in E.P.No.5 of 2014 in R.C.O.P.No.23 of 2004 on the file of the District Munsif Court, Mannargudi.

2.Though the 1st respondent has entered appearance through counsel, there is no representation for her, when the matter is taken up for hearing.

3.Though notice has been served on the respondents 2 and 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.



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4. Heard the learned counsel appearing for the petitioner and perused the entire materials on record.

5. The petitioner is third party in R.C.O.P.No.23 of 2004 and E.P.No.5 of 2014. The 1st respondent/landlord filed said R.C.O.P. against the respondents 2 to 4/tenants and eviction was ordered on 09.09.2005. R.C.A.Nos.32 and 34 of 2006 and C.R.P.Nos.2268 and 2269 of 2007 filed by the respondents 2 to 4 against order of eviction were dismissed. The 1st respondent/landlord filed E.P.No.5 of 2014 for possession of petition premises as per the order of eviction. At that stage, the petitioner filed E.A.No.105 of 2014 in E.P.No.5 of 2014 as an obstructor. In the said E.A., he again filed present E.A.No.11 of 2015 for appointment of Advocate Commissioner to inspect the petition premises and the shop in possession and to file report.

6. According to the petitioner, as per oral rental agreement, the petitioner became tenant under 1st respondent from January 2001 in



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respect of southern portion of the petition premises and doing business in the name and style of 'Sri Cauvery Traders' and he is paying Rs.1,250/- as monthly rent to the agent of 1st respondent from time to time. He paid rent upto August 2014 and on trust, receipts were not received for payment of rent. The petition premises is divided into two portions by wooden partition as southern and northern portion. The petitioner is tenant in respect of southern portion. The respondents 2 to 4 are running medical shop in the northern portion. The respondents 2 to 4 vacated the petition premises and went away. The northern portion of the petition premises is closed for years together. On 11.09.2014, the agent of the 1st respondent came to petitioner's shop and informed him to vacate the shop within two days, otherwise he will be vacated through Court Official. Then only the petitioner came to know about R.C.O.P.No.23 of 2004 and E.P.No.5 of 2014 filed by the 1st respondent. Immediately, the petitioner filed E.A.No.105 of 2014 in E.P.No.5 of 2014 as an obstructor. The petitioner has registered the shop with Commercial Tax Department and is paying tax. Eviction order passed against the respondents 2 to 4 is not binding on



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the petitioner. The petitioner is doing business and he is in possession of southern portion of petition premises. Only when Advocate Commissioner is appointed to inspect the petition premises, it will be helpful to prove the averments in the obstruction petition that petitioner's possession and property alleged to have been taken possession by 1st respondent are different. The report of the Advocate Commissioner will reduce the examination of the witness to prove the case of the petitioner and prayed for appointment of Advocate Commissioner in the obstruction petition.

7.The 1st respondent filed counter affidavit denying all the averments stated that in the R.C.O.P., the petition premises is clearly described as Door No.79 with boundaries. On 12.09.2014, the 1st respondent took possession of petition premises through Court amina with the help of Police, all the goods in the petition premises including flux board were removed, steel rods were put in front of the shop and shop is locked with number of locks. When the 1st respondent was out of station, the petitioner kept the flux board to create an impression that he



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is in possession of petition premises and filed present petition for appointment of Advocate Commissioner. The petitioner has to prove his possession only by letting in oral and documentary evidence in the obstruction petition. The petitioner is trying to collect evidence through Advocate Commissioner, it is an abuse of process of law and prayed for dismissal of the said petition.

8.Before the learned Judge, the petitioner did not let in any oral evidence. He filed and marked 12 documents as Exs.P1 to P12. The 1st respondent did not let in any oral and documentary evidence.

9.The learned Judge considering the averments in the affidavit, counter affidavit, the documents marked by the petitioner and judgments relied on by the counsel for the 1st respondent, dismissed E.A.No.11 of 2015.

10.Against the said order of dismissal dated 18.11.2015 in



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E.A.No.11 of 2015 in E.A.No.105 of 2014 in E.P.No.5 of 2014 in R.C.O.P.No.23 of 2004, the petitioner has come out with the present Civil Revision Petition.

11.From the materials on record, it is seen that 1st respondent has filed E.P.No.5 of 2014 for eviction of respondents 2 to 4 as per order of eviction passed in R.C.O.P.No.23 of 2004, which was confirmed in the R.C.A.Nos.32 and 34 of 2006 and C.R.P.Nos.2268 and 2269 of 2007. In the E.P. filed by the 1st respondent, the petitioner filed E.A.No.105 of 2014 under Order XXI Rule 97 of C.P.C. as an obstructer. In the said E.A., the petitioner filed present E.A.No.11 of 2015 under Order XXVI Rule 9 read with Section 151 of C.P.C. for appointment of Advocate Commissioner to inspect the petition premises and to file a report. According to the petitioner, the petition premises is divided into two parts as southern and northern portion. The petitioner is tenant in the southern portion under 1st respondent from January 2001 and carrying on business in the name and style of 'Sri Cauvery Traders'. According to the petitioner, he has registered his business with Commercial Tax Department and is



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paying statutory dues to the Government. When the petitioner is taking such a specific stand, it is for him to prove the same by letting in oral and documentary evidence in the petition filed by him as an obstructor to show that he is tenant under 1st respondent in respect of southern portion of the suit property. It is for the petitioner to prove by letting in acceptable evidence that there are two portions and the 1st respondent has obtained order of eviction only against the respondents 2 to 4, who are the tenants in the northern portion of the petition premises. It is well settled that an Advocate Commissioner cannot be appointed to verify as to who is in possession of the particular property. By filing application for appointment of Advocate Commissioner, the petitioner is trying to collect materials to prove his possession. The same cannot be allowed as per well settled judicial pronouncement. The learned Judge has considered all the materials placed before him in proper perspective and dismissed the petition. There is no error in the order of the learned Judge warranting interference by this Court.

12.For the above reasons, the Civil Revision Petition stands



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dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

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Index : Yes/No
Internet: Yes/No
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To

The District Munsif
Mannargudi.

V.M.VELUMANI,J.

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