



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.236 of 2023

K.S.Sudhakar

... Petitioner

Vs.

P.Mahavir Mehta

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal dated 15.09.2022 passed by the Learned III Additional District Judge, Coimbatore in I.A.No.1 of 2021 in O.S.No.632 of 2019.

For Petitioner

: Mr.J.Dayana

ORDER

The fair and decreetal order dated 15.09.2022 passed in I.A.No.1 of 2021 in O.S.No.632 of 2019 is under challenge in the present civil revision petition.



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2. The revision petitioner instituted the Suit for redemption of mortgage and during the pendency of the Suit he filed an Interlocutory Application in I.A.No.1 of 2021 under Section 94(b) and Section 151 of Code of Civil Procedure directing the respondents to furnish security for an amount not less than Rs.15,00,000/-.

3. The Trial Court adjudicated the issues and made a finding that only after payment of mortgage money the respondent can hand over the possession of plaint schedule property to the petitioner. The Trial court found that admittedly the mortgage money has not been paid by the petitioner to the respondent and by taking into account that the mortgage period has expired he cannot claim any rent or compensation from the respondent for his use and occupation of the plaint schedule property.

4. The Court formed an opinion that the said claim is against the basics of usufructuary mortgage. When the revision petitioner / plaintiff has not deposited the mortgage amount, the very claim itself is untenable and more so, the relief sought for in the Interlocutory Application is also unsustainable. The plaintiff has not fulfilled his obligations and therefore, he cannot seek



relief by way of right from the defendants and thus, this court do not find any infirmity in respect of the findings made by the Trial court.

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5. Accordingly, the fair and decreetal order dated 15.09.2022 passed in I.A.No.1 of 2021 in O.S.No.632 of 2019 stands confirmed and Consequently, the Civil Revision Petition in C.R.P.No.236 of 2023 is dismissed. No costs.

06.02.2023

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
III Additional District Court
Coimbatore.



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S.M.SUBRAMANIAM, J.

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