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CRP No.2912 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.2912 of 2022

and

C.M.P. No. 15822 of 2022

L.Anandaraj

... Petitioner

Versus

1.R.Indirakumari

2.The Tamil Nadu Housing Board,
Represented by its Managing Director,
No.493, Anna Salai, Nandanam,
Chennai-600 035.

...Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 09.03.2022 passed in I.A.No.4 of 2020 in O.S.No.1566 of 2019 on the file of XI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr. H.Rajasekar

For R1 : Mr. M. Vimal Bobby Crimson

ORDER

The petitioner has filed this revision petition to set aside the fair and decreetal order dated 09.03.2022 passed in I.A.No.4 of 2020 in O.S.No.1566



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of 2019 on the file of XI Assistant Judge, City Civil Court, Chennai.

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2. Heard, Mr. H. Rajasekar, learned counsel for the petitioner and Mr. M. Vimal Bobby Crimson, learned counsel appearing for the first respondent and perused the materials available on record.

3. The learned counsel for the revision petitioner submitted that the plaintiff filed I.A.No.4 of 2020 in O.S.No.1566 of 2019, on the file of the City Civil Court, Chennai, praying for the relief of specific performance with alternative prayer along with consequential relief of permanent injunction and the same was contested by the defendant by filing their written statement by denying the plaintiff's claim.

4. The contention of the first defendant is that the property absolutely belongs to him, which was originally belonged to the Tamil Nadu Housing Board and it was allotted to one R.Rajalakshmi, who is the mother of the 1st respondent. Thereafter, he become absolute owner, by receiving the lease amount. The plaintiff was put in possession of the property as lessee, but he sub-let illegally without his knowledge and when it was objected ,he filed the suit. Now the property was transferred in the name of first defendant and



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paying tax to the Revenue Authorities. Thereby, he denied the plaintiff's claim over the property. The suit was ripe for trial. At this juncture, the plaintiff has filed application to amend the prayer by amending the alternative claim of Rs.10 lakhs instead of Rs.6 lakhs and also bound to add one more sentences In Pr.8 of the plaint "after the suit was filed, the first defendant high handedly evicted the plaintiff's tenant and occupied the suit property". To amend the plaint he filed the petition under Order VI Rule 17 r/w Section 151 of CPC, in I.A.No.4 of 2020, in O.S.No.1566 of 2013, on the file of the City Civil Court, Chennai.

5. The said application was strongly objected by the defendants stating that the plaintiff has no locus standi to dispute the possession and enjoyment of the property for the reason that as an absolute owner, he inducted tenancy. Further he contended that, the claim of Rs.10 lakhs made by the plaintiff is baseless. Therefore, they raised objection to amend the plaint.

6. On hearing both sides, the learned trial Judge dismissed the said application holding that the plaintiff has spent his money on his own volition in the said flat and it was never insisted by the first defendant to make interior decoration. Therefore, the amendment sought by the plaintiff cannot be



effected. Admittedly while filing the suit, the plaintiff prayed for alternative remedy of Rs.6 lakhs, now he wants to enhance the same as Rs.10 lakhs.

Though it was denied by the defendant, burden is cast upon the plaintiff to prove that he has entitled for Rs.10 lakhs to adduce the material evidence before the trial Court.

7. But the learned trial Judge without giving opportunity to the plaintiff erroneously dismissed the claim by drawing an observation that he had spent the said amount out of his own will. As rightly pointed out by the learned counsel for the revision petitioner, without any evidence, the learned trial Judge is not entitled to make such observation, is agreeable one. After the suit, according to the plaintiff the first defendant inducted a new tenancy but the same can be subject to proof. To that effect the objection raised by the defendants also not agreeable. Therefore, the findings of the learned trial Judge is liable to be set aside since it was passed with material evidence.

8. Accordingly, the Civil Revision Petition is allowed and the findings passed in I.A.No.4 of 2020 in O.S.No.1566 of 2019 by the learned XI Assistant Judge, City Civil Court, Chennai is hereby set aside. Liberty is granted to the defendants to file a reply additional written statement to prove



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his defense in respect of the said amendment. The learned trial Judge is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order without giving necessary adjournments.

9. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

03.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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To

1. The XIth Assistant Judge, City Civil Court, Chennai.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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