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C.M.A.No.1873 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1873 of 2023
and CMP.No.18303 of 2023

Emmanuel Petitioner
S/o. Mr.Wilson
Carrying on business under the name and style
Auxilium Service Station
Near Green Circle
National Highways
New Katpadi Road
Vellore - 4.

Vs

1.The Dioscese of Vellore Society, Vellore
Rep by its Secretary
Having Office at :
Catholic Bishop's House
No.34, Officer's Line
P.B.No.107
Vellore - 632 001.

2.M/s.Aroka Madha Parish
Rep by the Diocese of Vellore Society
By its Secretary, Having Office at :
Catholic Bishop's House
No.34, Officer's Line
P.B.No.107
Vellore - 632 001.



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Rev.Fr.S.Arulappan (Died)

3.Rev.Fr.A.Pancrasu

S/o.Anthaiah

No.2, Raman Maharishi Loyola Matriculation School

Ayanpalayam, Chengam Road

Thiruvannamalai District.

4.G.Navin

..... Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1(r) CPC r/w.Sec.91 of City Tenants Protection Act, 1972, praying to set aside the fair and decretal order dated 16.06.2023 passed in I.A.No.4 of 2023 in O.S.No.57 of 2018 by the Additional District Judge (FTC) Vellore.

For Petitioner : Mr.N.Suresh
for Ms.D.Chitra Maragatham
For Respondents : Mr.V.Manohar for R4

JUDGMENT

The appellant herein challenges an order passed by the learned Additional District Judge (FTC) Vellore, in I.A.No.4 of 2023 in O.S.No.57 of 2018. The order under challenge is ancillary to a dispute between the landlord and the tenant, of whom, the appellant is the tenant.

2.It is an undisputed fact that the first respondent is the owner of a piece of



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property which was leased out to the appellant Vide lease deed dated 05.07.1997. As per the lease deed, the lease term will end on 04.07.2004.

According to the appellant, in between, a lease deed dated 01.08.2002 styled as a lease agreement was brought into existence without the consent of the appellant, based on which, the third respondent herein issued a eviction notice dated 31.07.2007. This has instigated the appellant herein to prefer O.S.No.431 of 2009 against the respondent herein for bare injunction that his peaceful possession might not be disturbed. This suit came to be dismissed on 06.02.2014, and the same was confirmed by the first Appellate Court in A.S.No.21 of 2014. While so, the first respondent society through the second respondent sold the property to the 4th respondent herein.

3. In this circumstances, the appellant would institute O.S.No.244 of 2016 before the District Munsif Court, Vellore *inter alia* for declaration that the sale deed executed by the respondents 1 and 2 in favour of the 4th respondent is void and not binding, and also for sale of the said property to the appellant.

4.The respondent on its part had instituted O.S.No.8 of 2017 before the first Additional District Court, Vellore for eviction of his tenant. Subsequently,



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O.S.No.244 of 2016 filed by the tenant was transferred to the first Additional District Court where it was taken on record as O.S.No.57 of 2018. It is in this suit, the appellant herein had filed I.A.No.4 of 2023 purported to be under Section 9 of the City Tenants Protection Act. This petition was dismissed by the learned District Judge on the ground that it was filed beyond the limitation period of 30 days from the date of receipt of the summons prescribed under Section 9 of the Act. This is now under challenge.

5. The learned counsel for the appellant submitted that while the petitioner has styled his application as falling under Section 9, in the prayer portion, all that he has sought is only appointment of a Commissioner for local inspection to note down the physical features of the property, and also to suggest the extent which may be necessary for the convenient enjoyment of the tenant. What in essence this prayer signifies is only appointment of a Commissioner and nothing more.

6. The learned counsel for the 4th respondent submitted that if the affidavit filed in support of the petition is read, it indicates that the object for appointing the Commissioner is only for earmarking such area for the sale of



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the property within the meaning of Section 9. Therefore, if Sec. 9 of the City Tenancy Protection Act cannot have any application, there is no need for appointing a Commissioner at all. He also submitted that the City Tenants Protection Act itself will not apply, since the property belongs to a religious institution, and the property of the religious institutions are saved from the application of the said Act.

7. After carefully evaluating both sides, it emerges that the appellant may not be able to sustain or maintain I.A.No.4 of 2023, since this is purported to have been filed under Section 9 of the City Tenants Protection Act, in the very suit that the appellant has filed in O.S.No.57 of 2018.

8. The learned counsel for the appellant submitted that without prejudice to the pleadings of the defendants, even in the worst case scenario, the appellant will still be entitled to the value of the improvements under Section 3 of the City Tenants Protection Act.

9. This Court for the present leaves open the issue regarding the application of the City Tenants Protection Act to the facts of the case to claim the value



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of improvements alleged to have been made by him to the property. Given the nature of facts presented before the Court, and given the fact that the appellant cannot sustain or maintain his petition filed under Sec.9 of the City Tenancy Protection Act, this Court chooses to modify the order of the trial court and decides to appoint the Commissioner, for entirely different purpose. Supposing the trial court finds that the appellant is entitled to value of any improvements which he alleges to have made to the property in his occupation, then it might be necessary for the court to determine the value of improvements alleged to have been made by the appellant. Rather than undertaking the exercise at a later point of time and delay the final outcome of the suits, this Court considers it appropriate to complete the process now. It is, however, made clear that this order does not dispense the appellant from proving what he considers as improvements made in the property, and this has to be decided by the trial Court, nor can it be construed that this Court has decided any issue pertaining to the applicability of the City Tenants Protection Act. As stated earlier, this appeal is allowed only to shorten the duration of the litigation, since in the eventuality of the trial Court holding in favour of the appellants, rather than driving the parties to another length of time for obtaining the value of improvements.



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10. The appeal is disposed of accordingly. The trial Court is required to appoint an advocate, where he is reasonably regular in appearing before the Court and has also some standing in the civil Bar as the Commissioner, whom to be assisted by a qualified engineer to note any such improvements which the appellant claims to have made. The appellant is now required to circulate a memo before the trial Court as to the exact aspects which he requires the Commissioner to take note of. The respondents are also at liberty to circulate any similar memo either before the Court or at any time during the visit of the Commissioner. Once appointed, the Commissioner is required to complete his exercise within a period of four weeks. In the meantime, the trial of the case is directed to continue. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

Speaking order / Non-speaking order
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Note : Issue order copy on 06.11.2023



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To:

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1.The Additional District Judge (FTC)
Vellore.

2.The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

ds

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