



C.R.P.No.4382 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4382 of 2022

and

C.M.P.No.23222 of 2022

1.A.Srinivasan

2.A.Sukanya

... Petitioner

Vs.

1.R.Lakshman

2.R.Naresh

3.R.Gopal

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order dated 13.10.2022 made in M.P.No.1 of 2022 in RCA No.388 of 2019 on the file of VII Court of Small Causes Court, Chennai.

For Petitioner : Mr.D.Rajagopal

ORDER

The Civil Revision Petition has been filed to set aside the Order dated 13.10.2022, made in M.P.No.1 of 2022, in RCA No.388 of 2019, on the file of VII Court of Small Causes Court, Chennai. The Revision



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Petitioners are the tenants who filed an appeal in RCA No.388 of 2019, challenging the order passed in RCOP No.22 of 2017.

2. The respondents/landlord instituted proceedings for eviction in RCOP No.22 of 2017, which was allowed by the Trial Court. The eviction was ordered, challenging the said order, the revision petitioners/tenants filed RCA No.388 of 2019. During the pendency of the Appeal, the revision petitioners filed a Miscellaneous Petition in MP.No.1 of 2022, for the appointment of an Advocate Commissioner to find out the status of the subject premises.

3. The respondents/landlord filed a petition for eviction mainly on the ground of demolition and re-construction of the subject premises on the ground that the building is old and in a deliberate condition. During the pendency of the appeal, the landlords got possession of two shops and carried out certain repairs and renovated the building. Under those circumstances, the revision petitioners filed the miscellaneous petition for the appointment of an Advocate commissioner.



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4. The Appellate Court considered the issues and made a finding that because one of the shops is renovated and let out to a tailoring business, it cannot be inferred that the intentions of the respondents/landlords in seeking eviction on the ground of demolition and reconstruction is vitiated by mala fides. The petitioner has not produced any proof to establish that the other shops were also let out. Under those circumstances, there is no necessity to appoint an Advocate commissioner to inspect the subject premises.

5. This Court is of the considered opinion that the appointment of an Advocate Commissioner has to be made only if a doubt arises in the mind of the Court and it cannot be made at the instance of the parties at all circumstances. In some occasions, such petitions are filed to appoint Advocate Commissioner in order to create additional evidence or to establish the case. Parties are at liberty to establish their case only through documents and evidence and Court cannot provide assistance by appointing an Advocate Commissioner for the purpose of creating any evidence or enabling



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the parties to establish their own case through the report of the Advocate Commissioner. Such a practice at no circumstance be encouraged by the Trial Courts.

6. In the present case, the Appellate Court found that the petitioner has not furnished any proof to establish that the shop has been let out. Therefore, the question of appointment of an Advocate Commissioner at the appellate stage is unwarranted and this Court does not find any infirmity in respect of the order passed by the Appellate Court.

7. Thus, the Civil Revision Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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04.01.2023

Index:Yes
Internet:Yes
Speaking Order



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S.M.SUBRAMANIAM.J.,

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To

1. Court of Small Causes Court, Chennai.

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