



C.R.P(MD).No.590 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.590 of 2023

and

CMP(MD)No.2003 of 2023

Sivasubramanian

... Petitioner/Petitioner/Respondent/
Defendant

Vs.

Jayaprabha

... Respondent/Respondent/Petitioner/
Plaintiff

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition setting aside the order dated 23.11.2022 made in E.A.No.68 of 2022 in E.P.No.48 of 2021 in O.S.No.952 of 2017 on the file of the II Additional Sub Court, Madurai.

For petitioner : Mr.S.Mohanraj

ORDER

The petition has been filed to set aside the order passed by the II Additional Sub Court, Madurai, in E.A.No.68 of 2022 in E.P.No.48 of 2021 in O.S.No.952 of 2017, order dated 23.11.2022.



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2.The petitioner is the tenant of the suit property which was purchased by the respondent/plaintiff from the vendor namely, Poomayil. During the pendency of lease agreement between the petitioner and the respondent's vendor for a period between 07.12.2012 and 14.09.2016, the respondent appears to have purchased the property on 25.04.2016. In such circumstances, with an intention to evict the petitioner, the respondent has filed a suit in O.S.No.952 of 2012 before the II Additional Sub Court, Madurai, which came to be decreed on 24.11.2020.

3.Under these circumstances, the respondent has filed E.P.No.48 of 2021. By the impugned order dated 24.11.2020, the syholic possession was also taken over by the respondent. Now, the petitioner is willing to vacate the suit property subject to the condition that the respondent re-pay a sum of Rs.2,94,000/-, which was allegedly paid as an advance by the petitioner to the respondent's vendor namely, Poomayil.

4.Heard the learned counsel for the petitioner, perused the averments in the plaint and the judgment passed by the Trial Court on 24.11.2020, in O.S.No.952 of 2017.



5. Though the prayer to direct the respondent to pay the lease amount of Rs.2,94,000/- was made in the plaint, it appears that it has been scored off.

However, in Paragraph 11 of the plaint which deals with the cause of action it is stated the cause of action arose on 07.12.2012 when the respondent's vendor and the petitioner executed an unregistered mortgage deed, when the respondent's vendor received a sum of Rs.2,94,000/- as lease amount, the relief of mandatory injunction was not pressed for.

6. In the written statement, the petitioner has accepted the Lease Agreement amount of Rs.2,94,000/-. However, the decree that was passed by the Trial Court is silent as to whether aforesaid amount of Rs.2,94,000/- which was paid by the petitioner to the respondent's vendor was adjusted or not. The petitioner should to have prayed for a counter claim to recover the amount from the respondent or from the respondent's vendor to whom the petitioner had alleged paid the aforesaid amount when he entered into lease agreement. The petitioner cannot now stall the execution proceedings as the suit has been decreed where no relief has been given to the petitioner.

7. It is open for the petitioner to work out his remedy in the manner known to law to recover the amount either from the respondent or from the



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respondent's vendor with whom the petitioner had lease agreement dated 07.12.2012.

8. Therefore, this Civil Revision Petition filed against the impugned fair and decretal order dated 23.11.2012 in E.A.68 of 2022 in I.A.No.48 of 2021 in O.S.No.954 of 2014 is liable to be dismissed. It is accordingly, dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

1. The II Additional Sub Court,
Madurai.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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