



C.R.P(MD)No.366 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.366 of 2023

and

C.M.P(MD)No.1798 of 2023

D.Sathish Kumar

... Petitioner/Petitioner/
Plaintiff

Vs.

Lourthammal

... Respondent/Respondent/
Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating the fair and decreetal order passed in I.A.No.2 of 2020 on O.S.No.214 of 2019 dated 15-07-2022 on the file of the 1st Additional District Munsif Court, Kuzhithurai and set aside the same

For Petitioner : Mr.A.Robinson



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ORDER

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The plaintiff in a suit for permanent injunction had filed an application for appointment of an Advocate Commissioner to assess the damages caused by the agents of the defendants.

2. According to the plaintiff, he is the tenant of the defendant's property and the defendant was attempting to forcibly evict him without following due process of law. Based upon the said allegations, the suit was filed for permanent injunction not to disturb his possession or initiate any unlawful action for forcible eviction of the plaintiff. According to the petitioner, pending suit, some elements have entered into the shop and have caused damages to the property. Hence, the plaintiff had filed I.A.No.2 of 2020 for appointment of an Advocate Commissioner to assess the damages caused to his property. The trial Court after considering the plaint prayer, has rejected the request for appointment of an Advocate Commissioner on the ground that the assessment of damages does not fall within the purview of the main prayer in the suit. Challenging the same, the present revision petition has been filed.



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3. I have carefully considered the submission made on the side of the petitioner.

4. A perusal of the plaint prayer will clearly indicate that it is a suit for bare injunction that the possession of the plaintiff should not be disturbed unless by due process of law. In case, if some untoward incident had happened after the filing of the suit, it is for the plaintiff to amend the prayer or file a separate suit seeking damages. With the present plaint prayer, the commissioner application is not maintainable. I do not find any illegality or infirmity in the order passed by the trial Court.

5. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.02.2023

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

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- To
- 1.The 1st Additional District Munsif Court,
Kuzhithurai.
 - 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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