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C.R.P.(MD).No.153 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.R.P.(MD).No.153 of 2023

and

C.M.P.(MD).No.729 of 2023

Tamilselvam

... Petitioner / Petitioner/
Respondent/ Tenant

Vs.

Kamal Batcha

...Respondent / Respondent /
Petitioner / Landlord

Prayer: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 13.09.2022 made in E.A.No.05 of 2021 in E.P.No.29 of 2018 in R.C.O.P.No.03 of 2012 on the file of the Principal District Munsif Court, Kumbakonam and allow this Civil Revision Petition.

For Petitioner : Mr.G.Mohankumar

For Respondent : Mr.V.Chandrasekar

ORDER

The Civil Revision Petition has been filed challenging the order passed in E.A.No.05 of 2021 in E.P.No.29 of 2018 in R.C.O.P.No.03 of 2012 on the file of the Principal District Munsif Court, Kumbakonam.



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2. The above petition was filed by the tenant, who had suffered an order of eviction passed by the Rent Controller, which was confirmed by the Appellate Court in R.C.A.No.6 of 2018 and further confirmed by this Court in C.R.P.(MD).No.895 of 2019. In the eviction petition filed by the landlord in E.P.No.29 of 2018, the petitioner filed E.A.No.05 of 2021 for appointing advocate commissioner under Section 47 of CPC. The petitioner sought for appointment of advocate commissioner on the ground that in the schedule of property before the Rent Controller in the Rent Control Petition filed by the landlord, the property measurement is shown as 20X15 sq.ft, whereas, the petitioner is actually in possession of the extent of 21X15 sq.ft. Since the property description in the Rent Control Petition is defective, the petitioner is sought to be evicted from a larger extent of property measuring 21X15 sq.ft.

3. The respondent landlord filed a counter in the said EA stating that the Rent Control Petition was filed in respect of only one schedule of property and there was no A schedule or B schedule property.

4. The Execution Court found that the said plea about the description of the property in the Rent Control Petition has not been taken before the Rent



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Controller. The judgment of the Rent Controller has been confirmed by the Appellate Court in R.C.A.No.6 of 2018 and by this Court in C.R.P.(MD). No.895 of 2019. The Executing Court cannot go into the question as to whether the description of the property is correct and hence, the appointment of advocate commissioner would not serve any purpose in the execution proceedings. Hence, the Execution Court dismissed the application filed for appointment of advocate commissioner.

5. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

6. This Court finds that in the rent control proceedings, the schedule of the property is shown as shop in Krishna Medicals bearing Door No.12 measuring 20X15 sq.ft. The petitioner has not objected to the description of the property in the counter or in any other manner before the Rent Control Court. The judgment of the Rent Control Court directing the petitioner to vacate the premises has been questioned in R.C.A and subsequently in a revision petition before this Court. The petitioner has failed before the three Courts. The petitioner has come up with an innovative plea for appointment of advocate commissioner, which is not necessary for the purpose of deciding the execution



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proceedings. The Execution Court has rightly rejected the application for appointment of advocate commissioner, since the Execution Court cannot go beyond the decree. The appointment of advocate commissioner is not essential for the purpose of deciding the execution proceedings in this case. This Court is of the considered view that the said petition has been filed as an attempt to delay the execution proceedings. Hence, this Court finds no merit in the above Civil Revision Petition.

7. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

21.02.2023

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

To

- 1.The Principal District Munsif Court,
Kumbakonam.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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SUNDER MOHAN, J.

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