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C.R.P. (PD) .No.4763 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4763 of 2024
and C.M.P.No.26661 of 2024

Palani,
Proprietor of Lakshmi Bhavani Engineering Works,
Thatchur Koot Road, Thatchur,
Ponneri Taluk, Tiruvallur District. .. Petitioner

Vs.

Priya .. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decree dated 14.10.2024 in I.A.No.2 of 2024 in O.S.No.148 of 2021 passed by the learned Additional Subordinate Judge, Ponneri.

For Petitioner : Mr.R.Prasadh

ORDER

This civil revision petition arises against the order passed by the learned Additional Subordinate Judge, Ponneri, in 14.10.2024 in I.A.No.2 of 2024 in O.S.No.148 of 2021.



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2.The civil revision petitioner is the defendant in the suit.

3.O.S.No.148 of 2021 is a suit presented for the following reliefs:

“a)for declaration of his right, title and interest in the suit property and for consequential recovery of possession after demolishing the super structure put up by the defendant.

b)for payment of past profits at the rate of Rs.5,000/- from April 2019 to June 2021 amount into Rs.1,30,000/-

c)for future profits at Rs.10,000/- per month from the date of plaintiff till the date of recovery of possession and

d)for awarding cost of the proceedings to the plaintiff and pass such other further order or orders as it may does fit and proper under the circumstances of the case.

4.The case of the plaintiff is that the property originally belonged to one, P.Elumalai and his brother, P.Munusamy. The brothers had alienated the property in favour of one K.Vasanth. The plaintiff had purchased the property from the said K.Vasanth, by way of registered sale deed, on 13.03.2019. Thereafter, the plaintiff called upon the defendant to attorn the



tenancy in their favour. The plaintiff pleaded that the defendant also attorned the tenancy. Subsequently, the plaintiff issued a notice calling upon the defendant to vacate and hand over the possession. He did not do so. Hence, being left with no other alternative, the plaintiff presented a suit for the aforesaid reliefs.

5.The defendant entered appearance and filed a detailed written statement. According to the defendant, the property belongs to one P.Elumalai and his brother P.Munusamy and that he is a tenant under the said P.Elumalai. He pleaded that he has put up a superstructure spending Rs.3,00,000/- and in addition, has obtained a three phase connection for his Engineering Works.

6.On these pleadings, issues were framed and parties were pushed to trial.

7.Evidence of P.W.1 has been concluded. At that stage, the defendant took out an application for appointment of an Advocate Commissioner to note down the features and file a rough sketch along with the report to find



out where the properties are situated and as to who is in possession and enjoyment of the same. This was received as I.A.No.2 of 2024. The plaintiff filed counter stating an Advocate Commissioner need be appointed to see who is in possession of the property. In addition, the plaintiff admitted that there is a superstructure over the property, whether it is a Tar shed or an ordinary shed, is in dispute. The plaintiff further pleaded that the application is a devise by the defendant to squat on the property and avoid payment of rent from 13.03.2019 to 12.07.2021.

8.The learned Additional Sub Judge, Ponneri, came to a conclusion that appointment of an Advocate Commissioner is not essential and therefore, dismissed the petition. Hence, the revision.

9.I heard Mr.R.Prasadh for the civil revision petitioner.

10.Mr.R.Prasadh pleads that the petitioner has put up a superstructure in and over the property and it is essential that it has to be proved by him in the suit. He further pleads that it is neither a shed nor a tar shed as alleged by the plaintiff, but a proper concrete superstructure. Hence he pleads for



appointment of an Advocate Commissioner

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11.I have carefully considered the submissions of Mr.R.Prasadh.

12.The suit itself is one for declaration of title and for recovery of possession. This implies that the defendant is in possession of the property. Therefore, there is no need for appointment of an Advocate Commissioner to see who is in possession of the property. Furthermore, an Advocate Commissioner cannot be appointed to see as to who is in possession. In this case, it matters not because the plaintiff has taken a stand that the defendant is in possession.

13.Furthermore, the tenancy between the defendant and the predecessors in title of the plaintiff is not in dispute. If a tenant puts up superstructure and if eviction is ordered, it is always open to him to remove the superstructure and walk away leaving behind the land. For this purpose, it matters not whether it is a shed, or a concrete structure or even whether a replica of the Red Fort has been built over the property. It does not in any way help to elucidate the matter in issue in the suit. It is not going to assist



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the Court in disposing the matter in dispute. I find no error in the order of the learned Additional Sub Judge at Ponneri.

14.In the result, this Civil Revision Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed. No costs.

26.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Additional Sub Court,
Ponneri.



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V.LAKSHMINARAYANAN, J.

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