



C.R.P.(MD)No.74 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.74 of 2024
and C.M.P.(MD).No.375 of 2024

P.Nagarajan

... Petitioner/Petitioner/Plaintiff

Vs.

A.Karuppan

... Respondent/Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order dated 08.11.2023 passed by the learned Principal District Munsif Court, Kulithalai in I.A.No.02 of 2022 in O.S.No.61 of 2016 and to set aside the same.

For Petitioner : Mr.P.Murughadasan

For Respondent : No Appearance

ORDER

This revision has been preferred against the the fair and decreetal order dated 08.11.2023 passed by the learned Principal District Munsif Court, Kulithalai in I.A.No.02 of 2022 in O.S.No.61 of 2016.



C.R.P.(MD)No.74 of 2024

WEB COPY

2.Suit in O.S.No.61 of 2016 was filed by this petitioner as the plaintiff seeking the relief of permanent injunction as not to evict him otherwise under due process of law. Pending the trial process petition in I.A.No.2 of 2024 was taken out by him seeking appointment of Commissioner under Order 26 Rule 9 of Civil Procedure Code with the following averments.

3.There was a rental agreement between the parties in 2006. It was an oral agreement. Rs.1,00,000/- was paid as advance amount. At that time, the property was vacant. Permission was granted to him to put up superstructure, shed and other amenities. It was agreed by the defendant that at the time of vacating the same he will compensate the plaintiff as per the market value. So he put up superstructure valued about Rs.20,00,000/-. He is also running Srikumaran Mate Industries. In 2015 threat was made by the defendant to vacate the premises. So the suit was filed. To ascertain and assess the superstructure value the petition has been filed.



C.R.P.(MD)No.74 of 2024

4.That was resisted by the respondent stating that the trial commenced and the plaintiff was also examined as PW1. During the course of evidence he gave wrong particulars about the property under lease. The plaintiff is not in possession of the property. He is in possession of the properties. Only to drag on the proceedings a petition is filed. The trial Court recorded the finding that the suit was filed in the year 2016. Now on the side of the plaintiff evidence was closed and posted for cross examination of DW1. Without cross examining DW1 the matter is dragged on by the petitioner. Moreover for collecting the evidence, no commission is permissible.

5.Against the above said dismissal, this revision has been preferred stating that it is not the intention of the revision petitioner to prove the possession. But, only to note down the physical features and estimation of the superstructure, that application was filed, which, no way causes prejudice to the case of the defendant namely the respondent herein.

6.Heard the petitioner. Though notice was served to the respondent none appears on behalf of him.



C.R.P.(MD)No.74 of 2024

WEB COPY

7.As stated in the preamble portion, it is the case of the petitioner that it was the oral lease agreement. Permission was granted to him to put up superstructure at his own costs. The defendant promised to pay the cost at market value at the time of vacating the premises. But as stated above it is the case of the respondent that no such oral agreement was entered between them. So when the lease itself disputed by the defendant, it is the primary duty of the petitioner/plaintiff to prove that he is lessee under the defendant. Similarly, he must also prove that he was permitted to put up superstructure at his own cost and that cost was promised to be paid at the time of vacating. All these things are being denied by the defendant. Unless this primary responsibilities of proving those things by the plaintiff, the estimation of superstructure will not arise. Now DW1 is not yet cross examined and in the course of trial process if any necessity arises to estimate the superstructure and etc. facts, the trial Court can appoint a Commissioner *suo motu* by invoking its jurisdiction. But as things stands today absolutely no necessity arises. It is also seen that a suit in O.S.No.53 of 2016 was also filed by the defendant against this petitioner. But, those particulars are not available



C.R.P.(MD)No.74 of 2024

before this Court. Now the above said suit is not on record. Since the title over the property is not under dispute, I am of the considered view that no commission need to be appointed at this stage.

8.In view of the above, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2024

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

To

- 1.The Principal District Munsif Court, Kulithalai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P.(MD)No.74 of 2024

G.ILANGO VAN,J.

TM

C.R.P.(MD)No.74 of 2024

16.02.2024