



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 16.06.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2290 of 2025

& CMP.No.13261 of 2025

K.Devika

... Petitioner

Vs.

A.Moorthy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 04.02.2025 passed by the learned IV Additional Subordinate Judge, Coimbatore in I.A.No.4 of 2024 in O.S.No.1470 of 2023.

For Petitioner : Mr.L.Mouli

For Respondent : M/s.R.Reshma

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 04.02.2025 passed by the learned IV Additional Subordinate Judge, Coimbatore in I.A.No.4 of 2024 in O.S.No.1470 of 2023.



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2. In O.S.No.1470 of 2023, the respondent/plaintiff took out an application in I.A.No.4 of 2024 for appointment of an Advocate Commissioner to inspect the suit property, along with an Engineer and file a report with regard to the nature of the property, especially the dilapidated condition of the building. The said application was resisted by the petitioner/defendant. However, the Trial Court has proceeded to allow the said application, as against which, the petitioner/defendant is before this Court by way of this revision.

3. Heard Mr.L.Mouli, learned counsel for the petitioner and M/s.R.Reshma, learned counsel for the respondent.

4. The learned counsel for the revision petitioner would submit that no reason has been set out for seeking appointment of an Advocate Commissioner and even before commencement of trial, the application has been taken out, only in order to fish for evidence. He would therefore pray for the order of the Trial Court being reversed in this revision.



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5.Per contra, the learned counsel for the respondent/plaintiff would submit that the building is in a very dilapidated condition and the same has been denied by the revision petitioner in the written statement. Further, the petitioner intends to demolish the old building and put up a new construction and only under such circumstances, the application for appointment of Advocate Commissioner was necessitated. He would therefore pray for the revision petition being dismissed.

6.I have gone through the pleadings of the parties in O.S.No.1470 of 2023 as well as in I.A.No.4 of 2024. I have considered the arguments advanced by the learned counsel on either side.

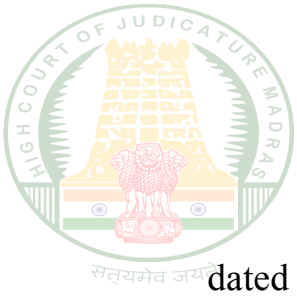
7.Admittedly, the suit is one for recovery of possession and damages for use and occupation from the petitioner/defendant. It is not an eviction petition under the special enactment, seeking demolition and reconstruction, in which event, such commission for examination of an expert Engineer may become necessary. In the present suit, the only criteria would be whether the plaintiff has validly terminated the tenancy of the



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petitioner/defendant and if so, the respondent/plaintiff is entitled to a relief of possession as well as damages for use and occupation. For deciding the issues in the suit, I do not find it necessary for an Advocate Commissioner to be appointed. It is outside the scope of the issues that arise for consideration in the suit. The nature of the building or the soundness of the building would be irrelevant to decide the cause of action in the present suit.

8. Insofar as the requirement of the premises by the respondent/plaintiff for demolition and reconstruction, once the respondent/plaintiff is able to ultimately succeed in the suit and get back possession of the property, it is always open to him to demolish the existing superstructure, irrespective of the condition of the same and thereafter put up a new construction. Therefore, the argument of the learned counsel for the respondent/plaintiff that, since the landlady requires the premises for demolition and reconstruction, an Advocate Commissioner should be appointed pending the suit, cannot be countenanced. I am therefore inclined to set aside the order of appointment of an Advocate Commissioner.



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9. Accordingly, this Civil Revision Petition is allowed and the order dated 04.02.2025 in I.A.No.4 of 2024 in O.S.No.1470 of 2023 on the file of the IV Additional Subordinate Judge, Coimbatore, is hereby set aside. However, at the same time, considering the averments made in the plaint that the building is in highly dilapidated condition and the defendant is also in the arrears according to the plaintiff, though these are denied by the petitioner/defendant, it would be sufficient to direct the Trial court to frame issues and dispose of the suit on or before 31.12.2025. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

16.06.2025

Speaking/Non-speaking : Yes/No

Index : Yes / No

Internet : Yes / No

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To

The IV Additional Subordinate Judge, Coimbatore.



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P.B. BALAJI,J.

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