

IN THE COURT OF THE ADDITIONAL SUBORDINATE JUDGE, PONNERI

Present : Thiru.K.Bakkiaraj, B.Com., B.L.

Additional Sub Judge, Ponneri

Dated this 14th day of October, 2024, Monday

**I.A. No.2 of 2024
in
O.S.No.148 of 2021**

Palani

Proprietor of Lakshmi Bhavani Enginnering Works.

Thatchur, Ponneri Taluk,

Thiruvallur District.

..... Petitioner/Defendant

Vs

Priya

..... Respondent /Plaintiff

This petition having stood over for consideration till this date came up finally in this court on 19.09.2024 in the presence of learned counsel M/s R.Kalamegam, for the petitioner and learned counsel Mr.G.Babu Rao, for the respondent and upon perusing the documents, evidence and hearing both sides this court today doth deliver the following:-

ORDER

This petition has been filed under Order 26 Rule 9 of CPC to appoint an advocate commissioner to note down the physical features and file a rough sketch along with report and those properties situated and who is in possession and enjoyment of the schedule mentioned property.

1. Brief Averments of Petition :-

The petitioner is the defendant in the above suit. The respondent/

plaintiff has filed the above suit for declaration of her right, title and interest in the suit property and for consequential relief of recovery of possession after demolishing the superstructure put up by the defendant and future profits and with cost. The suit property land was leased out to the petitioner by the Munusamy and Elumalai in the year 2004. Both of them absolute owners of the said land in the suit property as per their registered sale deed, vide document No.4081/2004 on the file of Sub Registrar Office, Ponneri, as they permitted the petitioner to put up superstructure in the suit property in his own expense and also obtained 3 phase commercial electricity service connections in the name of Elumalai and have been working in the name and style of "Lakshmi Bhavani Engineering Works" for the past 20 years.

The respondent issued a legal notice, dated 02.11.2020, the petitioner never agreed to pay rent to the respondent and has no right and title to seek the relief of recovery of possession and demolishing the superstructure put up by the petitioner. The respondent did not mention the petitioner's company name and did not say her notice and plaint averments. The respondents no document filed before this court to prove the lessor lessee relationship between the petitioner and the respondent. At the time of 2004 entered lease with Elumalai and Munusamy was still enforced. The respondent categorically deposed that her evidence PW.1 is utterly false. Hence this petition has to be filed to appoint an advocate commissioner to note down the physical features and file a rough sketch along with report in the schedule mentioned property. and find out those properties situated and who is possession and enjoyment of the said

property. If the petition is not allowed he will be put to irreparable loss and hardship to the petitioner.

2. The averments of the counter filed by the respondent :

i) The respondent/plaintiff's husband has deposed the entire evidence of the case on behalf of his wife. The respondent/plaintiff has filed the present suit for declaration of title to the suit property and for recovery of possession after removing the superstructure in the suit property and for future profits apart from rental arrears. The admitted case of the parties herein is that a superstructure whether in the form of a Tar shed or a shed is in existence with the suit property is not disputed and there is a three phase electrical connection and the petitioner used to get materials from Nelcast company and he used to shape the company produce and handover the same to the Nelcast company and only a hand grinder and polishing machine will be used by him and after the days work he will take the machinery and nothing will remain in the suit property and it has not even has get any doors or shutters open shed.

ii) The present affidavit is totally misconceived by the petitioner and no useful will be served by appointing a commissioner and no useful purpose will be served by noting down the physical features and it is well settled that a commissioner shall not be appointed to fish out evidence or to prove possession and the present petition is a device by the petitioner to squat on the property and avoid payment of rent to the respondent which runs to Rs.22,400/- from 13.03.2019 to 12.07.2021 at the rate of Rs.800/- for the past 28 months and not to speak of subsequent damages from the above

said date. The present application is totally devoid of merits and it has to be dismissed exemplary cost.

3. Points for consideration is :

Whether this petition is to be allowed or not?

4. Point :

i) Heard both side and perused the materials available on record. It is found that the respondent/plaintiff has filed the above suit for declaration of her right, title and interest in the suit property and for consequential relief of recovery of possession. The petitioner/defendant herein filed this petition to appoint advocate commissioner to note down the physical features and file a rough sketch along with a report that more describes the schedule hereunder and find out where the properties situated and who is in possession and enjoyment of the schedule mentioned and to pass such further order. It well settled that an advocate commissioner cannot be appointed to prove possession of the suit property and to collect evidence. It is bound and duty of the party who asserted that he is in possession and enjoyment of the suit property to prove the same according to law. In this case on hand, the purpose of appointing an Advocate Commissioner is to collect evidence. Hence, this petition is liable to be dismissed.

ii) Moreover, the learned counsel for the petitioner/defendant would submit that the petitioner is in possession and enjoyment of the suit property for past 20 years, but the respondent/plaintiff has denied the same. That is why the petition has been filed to prove the superstructure which was put up by the petitioner in the suit property. But the respondent

has clearly admitted in her counter that the superstructure whether in the form of a Tar shed or a shed is in existence with the suit property is not disputed and there is a three phase electrical connection and the petitioner used to get materials from Nelcast company and he used to shape the company produce and hand over the same to the Nelcast company. Therefore no useful purpose will be served by appointing a commissioner to note down the structure of the suit property, since it is admitted by the respondent herein. It is obvious to note down here that the petition has been filed belatedly, since PW.1 has been cross examined in partly. This petition is nothing, but prolong the trial. It could not be entertained and accepted. Hence this court inclines to dismiss the petition without cost.

In the result, this petition is dismissed without costs.

Dictated to the steno-typist, transcribed and typed by her, corrected and pronounced by me in the open court on this 14th day of October-2024.

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

Both Side Witness and Exhibits: Nil

(Sd/- K.Bakkiaraj)
Additional Sub Judge,
Ponneri.

// True Copy //

I.A.No.2/2024 in
O.S.No.148/2021
Fair/Draft order
Dated: 14.10.2024
Additional Sub Court,
Ponneri.