



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD

CIVIL REVISION PETITION NO. 549 OF 2023 (SC)

BETWEEN:

SMT. BHANUMATHI
W/O LATE G YESHWANTH RAO
AGED ABOUT 67 YEARS
PROPRIETOR OF MADHU SWEETS
SHOP NO.8 IN PREMISES NO.168/2
MADHAVARAYA MUDALIAYAR ROAD
M M ROAD, COXTOWN
BENGALURU-560005

...PETITIONER

(BY SRI.A RAMESH GOWDA., ADVOCATE)

AND:

SRI.S.M. RAMACHANDRA MURTHY
S/O LATE MARIYANNA @MARIYAPPA
AGED ABOUT 65 YEARS
R/A NO.723, 7TH MAIN
MAHALAKSHMI LAYOUT
BENGALURU-560086.

...RESPONDENT

(BY SRI. SANKETH K K, ADVOCATE FOR
SRI.KESHAVA K V.,ADVOCATE)

THIS CRP IS FILED UNDER SECTION 18 OF THE
KARNATAKA SMALL CAUSE COURT ACT, 1964, AGAINST THE
ORDER DATED 08.08.2023 PASSED ON IA IN S.C No.
802/2021 ON THE FILE OF THE II ADDITIONAL SMALL CAUSES
JUDGE BENGALURU (SCCH-13), REJECTING THE IA FILED
UNDER ORDER 26 RULE 9 OF CPC.





THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This revision petition is filed under Section 18 of the Karnataka Small Cause Courts Act, 1964 (for short, 'Small Cause Courts Act') by the petitioner/defendant challenging the order dated 08.08.2023 passed by the II Additional Judge, Court of Small Causes, Bangalore in S.C.No.802/2021, whereby the application filed by the defendant under Order XXVI Rule 9 of CPC has been rejected.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial court.

3. The brief facts of the case is that the plaintiff has filed a suit for ejectment. After service of summons, defendant appeared through counsel and filed a written statement. After the plaintiff's evidence has been completed, defendant filed an application under Order XXVI Rule 9 of CPC for appointment of court commissioner. The trial court, by the impugned order,



rejected the same. Being aggrieved by the same, the defendant is before this Court.

4. Learned counsel appearing for the defendant contended that the suit schedule premises is less than 14 sq.mtrs. The Small Causes Court itself has no jurisdiction. Therefore, she sought for appointment of the court commissioner to measure the suit premises and to find out whether the trial court has jurisdiction or not. But, without considering this aspect of the matter, the trial court has erred in dismissing the application. Hence, he sought for allowing of the petition.

5. Per contra, learned counsel appearing for the plaintiff has contended that the plaintiff has adduced the evidence and the defendant has not entered the witness box, he has not deposed that the suit schedule premises is less than 14 sq.mtrs. Without adducing evidence, she has filed this application. Therefore, the trial court has rightly rejected the application. Hence, he sought for dismissal of the petition.



6. Heard the learned counsel for the parties. Perused the order and the revision papers.

7. It is not in dispute that the plaintiff filed a suit for ejectment. On appearance of the defendant, she has filed the written statement. After framing the issues the plaintiff adduced his evidence and the matter was posted for the evidence of the defendant. At that time, the defendant filed an application for appointment of the court commissioner under Order XXVI Rule 9 of CPC. The defendant, without entering the witness box and without adducing the evidence to show that the suit schedule property is less than 14 sq.mtrs, filed the application. The trial court has rightly rejected the application. At this stage, it is not necessary to appoint the court commissioner, it can be considered only after defendant leads the evidence by producing the supporting documents.

8. Accordingly, the revision petition is dismissed reserving liberty to the defendant, after the completion of



the evidence of the parties, to file an application for appointment of court commissioner. If such an application is filed, the trial court is directed to consider the same in accordance with law.

In view of disposal of the main matter, the pending applications do not survive for consideration.

Sd/-
JUDGE

CM
List No.: 1 SI No.: 47