



C.R.P.(MD) No.456 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.456 of 2023

and

C.M.P.(MD) Nos.2176 & 3773 of 2023

Radhakrishnan @ Radha

... Petitioner

Vs.

Sitheeswaran

... Respondent

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 19.01.2023 passed in the application in I.A.No.2 of 2022 in O.S.No.278 of 2016 on the file of the Subordinate Court, Sivagangai.

For Petitioner : Mr.J.Barathan

ORDER

This Civil Revision Petition is filed by the petitioner to set aside the fair and decretal order dated 19.01.2023 passed in I.A.No.2 of 2022 in O.S.No. 278 of 2018 on the file of the Subordinate Court, Sivagangai.



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2. The petitioner is the second defendant in O.S.No.278 of 2016. The said suit was filed by the respondent/plaintiff for recovery of a sum of Rs.6,40,901/- towards use and occupation and for recovery of a sum of Rs.1,03,500/- as arrears of rent and for future damages for use and occupation of the suit premises from the petitioner/second defendant.

3. According to the petitioner/second defendant, the I.A.No.2 of 2022 in O.S.No.278 of 2016 was filed by the petitioner/second defendant under Order 18 Rule 17 and Section 151 of the Code of Civil Procedure, 1908 to re-call the D.W.1 evidence for marking certain documents which are relevant to the defence taken by him.

4. The said I.A. was resisted on the side of the respondent/plaintiff stating that the xerox copies of the documents which the petitioner/second defendant intended to mark were already marked through D.W.1 and therefore, there is no necessity to mark the above documents once again and further, the respondent/plaintiff has never objected for the marking these xerox copies.

5. The learned counsel appearing for the petitioner/second defendant would submit that the subject matter in O.S.No.278 of 2016 is connected with



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the second appeal in S.A.Nos.989 & 990 of 2001 and therefore, it is necessary to mark the above documents to have a fair adjudication. It is further submitted that the respondent/plaintiff himself had produced the decree in O.S.No.218 of 1998 on the file of the Additional District Court, Sivagangai, against which, the second appeal in S.A.No.990 of 2001 is pending and therefore, the application was filed to recall the D.W.1 for producing the Pendency Certificate issued by this Court and the Memorandum of Miscellaneous Petitions which are pending before this Court in the Second Appeals.

6. It is submitted that the Trial Court without appreciating the above facts, erred in dismissing the I.A. filed by the petitioner/second defendant to recall the D.W.1 to mark the documents.

7. On the other hand, the learned counsel for the respondent/plaintiff would submit that the xerox copies of the documents which the petitioner/second defendant intended to mark were already marked through P.W.1 and therefore, there is no necessity to mark certified copies once again in the suit.



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8. Heard on both sides. Perused the records.

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9. It is not dispute that the xerox copies of the above documents were already marked through D.W.1 and therefore, it is not necessary for the petitioner/second defendant to mark above documents once again in the suit proceedings. If there is an apprehension on the side of the petitioner/second defendant whether the above documents will be rejected on the ground that only xerox copies were filed, the petitioner/second defendant is at liberty to file an application or memo before the Trial Court for substitution of the certified copies in the place of xerox copies.

10. With the above observations, this Civil Revision Petition is dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

24.07.2023

Internet : Yes/No

Index : Yes/No

NCC : Yes/No

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To

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The Judge,
Subordinate Court,
Sivagangai.



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K.GOVINDARAJAN THILAKAVADI, J.

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