



CRP. Nos.2005 and 2008 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP. Nos.2005 and 2008 of 2019

Mahalingam

...Petitioner/Respondent/Defendant
Vs.

Devendran

...Respondent/Petitioner/Plaintiff

PRAYER in CRP No.2005 of 2019: This Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the docket order dated 23.10.2017 made in I.A No.130 of 2010 in O. S No.103 of 2005 on the file of the Sub Court, Ariyalur.

PRAYER in CRP No.2008 of 2019: This Civil Revision Petition is filed under Section 115 of CPC, praying to set aside the docket order dated 23.10.2017 made in I.A No.203 of 2012 in O. S No.103 of 2005 on the file of the Sub Court, Ariyalur.

For Petitioner : Ms.M.Senthi Vadivu
(In both CRP)
For Respondent : Mr.S.Mukunth
(In Both CRP)



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COMMON ORDER

These Civil Revision petitions have been filed to set aside the docket order dated 23.10.2017 made in I.A No.203 of 2012 and I.A No.130 of 2010 in O. S No.103 of 2005 on the file of the Sub Court, Ariyalur.

2.The revision petitioner herein is the defendant in Suit O.S No.103 of 2005 filed by the plaintiff/respondent herein for the relief of specific performance of the suit agreement of sale and also directing the defendant to hand over the R.C book etc., and also other consequential relief.

3. The case of the petitioner/defendant is that the plaintiff/respondent filed a suit for specific performance against the defendant/petitioner herein, and he also contested the suit and also filed a written statement. While being so, the plaintiff/respondent filed a compromise memo on 06.01.2009 by saying that the matter was settled out of Court and I.A No.130 of 2010 filed for withdrawal of Rs. 72,816.



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4. The learned counsel for the defendant/petitioner Submitted that the petitioner was not aware of the said memo filed by the plaintiffs, but the Trial Court without considering the defendant opinion recorded the memo and the plaintiff also filed I.A No. 130 of 2010 in O.S NO. 103 of 2005 for withdraw the said amount but petitioner/defendant raised objection with regard to the compromise memo and filed I.A 230 of 2012 in O.S No.103 of 2005 to set aside the same. But Trial Court permitted the respondent/plaintiff to withdraw the said amount which was deposited by plaintiff while filing the suit. Thereafter the case was transferred to Sub Court Jayamkondam, without hearing his arguments exparte order was passed on 23.10.2017, but he is having defence to prove that no compromise was entered between them as submitted by the plaintiff and the alleged memo also submitted by the plaintiff was fraudulent one. Hence, she prays to set aside the docket order passed in I.A No. 130 of 2010 and 203 of 2012 in O.S No. 103 of 2005.

5. The learned counsel for the respondent submitted that there is no fraudulent in the memo filed by the plaintiff. Hence, he prayed to dismiss this petition.



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6. On considering the submission on either side, and also on perusal of records, it reveals that the plaintiff filed a suit in O.S No. 103 of 2005 for the relief of specific performance against the petitioner herein and also directed to give R.C with regard to tractor and trailer as described in the suit. Further, it is seen that the defendant/petitioner have been taken steps to sent the document/sale agreement to expert opinion to disprove the suit, to avoid those enquiry the plaintiff clandestinely withdraw the case by filing memo stating that the matter was settled out of Court. Hence, the entire case reveals that defendants denied the memo as claimed by the plaintiff. Further, the petitioner/defendant also not aware of the case transferred to Jayamkondam due to change of jurisdiction, at that time docket order was passed in I.A No.130 of 2010 in O.S No. 103 of 2005 without the knowledge of the petitioner. Therefore, this Court is of the view that one must be given fair opportunity to prove his case before the Court of law. Further, the petitioner/defendant filed I.A 203 of 2010 in O.S No.103 of 2005 for set aside the compromise memo filed by the respondent/plaintiffs dated 06.01.2009 this application also dismissed for default without assigning any reason. As discussed above, the docket order passed in I.A No.



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130 of 2010 and 203 of 2012 in O.S No. 103 of 2005 is hereby set aside

and O.S No. 103 of 2005 is restored. Accordingly, this Civil Revision

Petition is allowed. Further, the Trial Court is directed to dispose the

application within three months from the date of receipt of a copy of this

Order. No costs.

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T.V.THAMILSELVI,J.

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To

- 1.The Sub Court, Ariyalur.
2. The Section Officer,
Vernacular records,
High Court, Madras.

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