



C.R.P.(NPD)No.1477 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.1477 of 2016
and C.M.P.No.15179 of 2023
and C.M.P.No.8125 of 2016

K.Rajendran

... Petitioner

Vs.

A.Devamalar

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decretal Order of the III Additional City Civil Court at Chennai, dated 03.11.2014 in C.M.A.No.124 of 2014 confirming the fair and Decretal order of the VII Assistant City Civil Court at Chennai dated 19.09.2014 in I.A.No.670 of 2014 in O.S.No.4156 of 2010.

For Petitioner : Mr.P.Valliappan, Senior Counsel
for Mr.S.M.S.Shriram Narayanan

For Respondent : Mr.Rajesh Ramanathan



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ORDER

The civil revision petitioner is the plaintiff in the suit. He filed a suit for recovery of possession. In the said suit, the defendant filed a written statement, but did not co-operate for cross-examination. Therefore, the learned trial Judge decreed the suit on 05.01.2013.

2.Treating the decree as an ex-parte decree, an application was filed under Order 9 Rule 13 of the Code of Civil Procedure. It was filed within time on 31.01.2013. The learned trial Judge dismissed the application stating that it was not an ex-parte judgement, but one on merits. Against the said order, an appeal was preferred in C.M.A.No.124 of 2014. The learned Judge held that the decree that had been passed is only an ex-parte decree referring to Order 17 of the Code of Civil Procedure. Assailing the same, the present Civil Revision Petition has been filed.

3.Heard Mr.P.Valliappan, learned Senior Counsel appearing on behalf of the petitioner and Mr.Rajesh Ramanathan, learned counsel appearing on behalf of the respondent. I have carefully perused the



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records.

4.Mr.P.Valliappan would vehemently contend that despite the opportunity having been granted for cross-examination, the respondent did not participate in the same and sufficient evidence was let in, in order to prove the case and he had successfully obtained a decree. He would point out from Order 17 of the Code of Civil Procedure that if the defendant does not appear before the Court, discretion is granted to the Court either to dispose of the suit as exparte or to dispose of the suit on merits.

5.He would contend that the learned Judge, who dealt with the matter on 05.01.2013 decided to opt for disposing of the suit on merits and therefore, the judgement being one on merits of the case, a petition under Order 9 Rule 13 is not maintainable.

6.Reading of Order 17 Rule 2 of CPC would support the contention of Mr.P.Valliappan. However, reading of the explanation appended to Order 17 Rule 2 would clarify the position. In order for a Court to enter into the merits of the controversy, there must be evidence or substantial



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portion of evidence of the defendant already recorded and thereafter the defendant should have failed to appear before the Court. The narration of the fact set forth above would show that the defendant did not enter the witness box at all and therefore, there was no evidence on her side.

7.In the light of the above discussion, the order passed by the lower Appellate Court is correct and does not require any interference. The civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

25.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
gvn/vs

To

- 1.The III Additional City Civil Court,
Chennai.
- 2.The VII Assistant City Civil Court,
Chennai.

V.LAKSHMINARAYANAN,J.

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