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C.R.P.No.2581 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No.2581 of 2023
and
C.M.P. No. 15950 of 2023

P. Dhanagopal

.. Petitioner

Versus

1. The President,
No.S.1163, Kalipatty Handloom Weavers
Co-op.(Production and Sales) Society Ltd.,
Kalipatty Post, via. Attayampaatty,
Tiruchengode Taluk, Namakkal District.

2. The Director of Handlooms,
Kuralagam, Chennai.

3. The Assistant Director, Handlooms,
Handloom Weavers Co-op Societies,
North Car Street, Tiruchengode,
Tiruchengode Taluk, Namakkal District.

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.2 of 2022 in O.S.No.9 of 2016 on the file of the Principal District Munsif Court, Tiruchengode.

For Petitioner

: Mr. Dinuprashanth



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ORDER

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2. The revision petitioner is the plaintiff in O.S. No. 9 of 2016. He has filed the suit praying for a declaration to declare that he is entitled to get the sale deed executed by the first defendant society in his name and consequently direct the first defendant to execute the sale deed in his name in respect of the suit property by an order of perpetual mandatory injunction.

3. According to the plaintiff, his father-in-law Vaiyapuri was a member of the first defendant society. The first defendant society originally allotted the suit property in the name of the father in law of the petitioner. However, as his father in law could not pay the land cost, the allotment order was transferred in the name of the plaintiff and it was also duly endorsed by the first defendant society. According to the plaintiff, he has availed loan from HUDCO, constructed a house and residing there from the year 1990. Even though he has paid the entire due amount for allotment of the land from the year 1993, the first defendant postponed the execution of the sale deed in his name.



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Therefore, the plaintiff issued a legal notice on 05.11.2015 calling upon the first defendant to execute the sale deed in his name, but by a reply notice dated 14.11.2015, the first defendant has stated that the allotment stands only in the name of his father in law Vaiyapuri and refused to execute the sale deed. Therefore, the plaintiff has filed the suit.

4. On notice, the first defendant filed a written statement repudiating the plaint averments.

5. Pending suit, the plaintiff has filed an application to summon the witnesses namely Aranganathan, Subramani and Amirthalingam to depose before the Court in the suit. However, the summons issued by the Court to Aranganathan, one of the witnesses, has been returned as "refused". Therefore, the plaintiff has filed the instant application to pass a proclamation order against Aranganathan, Son of Vellaiyappa Naicker to give evidence and in the event of his failure, to pass orders for their arrest and to make an order of attachment of his properties. The trial court dismissed the said application on 04.11.2022, against which the present civil revision petition is filed.



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6. The learned counsel for the petitioner would vehemently contend that no fault could be attributed against the petitioner for non-serving of summons to the witness Aranganathan. The petitioner has taken diligent steps to serve the summons. When the witness refused the summons and disobeyed the order passed by the Court, such witnesses has to be arrested and produced before the Court. However, the Court below, on technicalities, observed that the process server, without following the due procedure, has merely endorsed as "refused" which was not attested by witnesses, as required. While so, the Court below, instead of dismissing the application, ought to have directed the Process Server to serve notice to the witness once again and to follow the procedures contemplated under law in the matter of service of notice. The Court below, instead of directing issuance of fresh service of notice to the witness has erroneously dismissed the application filed by the petitioner and therefore, he prayed for allowing this revision petition.

7. Having regard to the nature of disposal required in this Civil Revision Petition, this Court is not inclined to issue notice to the respondents in this case. The fact remains that there is no fault attributable on the part of the revision petitioner for the refusal of the summons by the witnesses. When the Process Server of the Court did not follow the procedures contemplated under



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law for service of summons to the witnesses, the Court below ought to have directed service of notice afresh to the witness, instead of dismissing the application filed by the petitioner. In such view of the matter, the order passed by the Court below is set aside. The Court below is directed to issue summons afresh to the witness by name Aranganathan, Son of Vellaiyappa Naicker within a period of two weeks from the date of receipt of a copy of this order and proceed further in accordance with law.

8. Accordingly, the Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.07.2023

Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The President,
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Co-op.(Production and Sales) Society Ltd.,
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4. The Principal District Munsif Court,
Tiruchengode.



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V.BHAVANI SUBBAROYAN,J.

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