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C.R.P.No.238 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.238 of 2023

and

C.M.P.No.1983 of 2023

M.G.Duraisamy

... Petitioner

Vs.

G.Jayakumari

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decretal order and fair order made by the Special Sub Judge, Vellore in I.A.No.2 of 2021 in O.S.No.208 of 2019 and dated 21.07.2022.

For Petitioner

: Mr.T.Saravanan



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ORDER

The civil revision petition is filed against the fair and decreetal order dated 21.07.2022 passed in I.A.No.2 of 2021 in O.S.No.208 of 2019.

2. The revision petitioner is the defendant in the Suit and the respondent instituted a Suit for recovery of money based on simple mortgage deed. The petitioner allowed the Trial Court to pass an exparte decree and subsequently, filed an Interlocutory Application in I.A.No.2 of 2021, after a lapse of about 200 days to set aside the exparte decree. The Trial Court adjudicated the issues and made a finding that the Suit has been instituted by the plaintiff based on a registered mortgage deed executed by the defendant. Thus, the Suit is not for specific performance as stated by the revision petitioner.

3. The revision petitioner / defendant had already filed his written statement, and not denied the mortgage executed by him in favour of the respondent / plaintiff. The Trial Court further found that several hearing dates were granted to the revision petitioner / defendant for cross-examination of PW1, which was not availed off by the defendant. However, the revision



petitioner / defendant filed an affidavit, stating that he could not appear before the Trial Court and file the written statement, since he was sick. It is further stated by the defendant that the plaintiff has filed the main Suit for specific performance, which is also found to be incorrect. Thus, the Trial Court formed an opinion that the revision petitioner / defendant approached the Court with incorrect facts. The petition was filed to drag on the proceedings and more so, in his written statement, he has not denied the mortgage deed executed by him in favour of the plaintiff. More so, the reason stated for the delay in filing the petition to set aside the exparte decree was also not candid and considering the fact and circumstances, Trial Court dismissed the application.

4. This Court do not find any infirmity in respect of the findings of the Trial Court. Litigants, who have stated incorrect facts and made an attempt to drag on the proceedings are not entitled for any relief from the hands of the Court. More so, the Trial Court found that the written statement was filed by the revision petitioner/defendant and he has not denied the execution of mortgage deed in favour of the plaintiff. Thus, the order impugned deserves no inference by this Court.



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5. Accordingly, the fair and decreetal order dated 21.07.2022 passed in I.A.No.2 of 2021 in O.S.No.208 of 2019 stands confirmed and consequently, the Civil Revision Petitioner in C.R.P.No.238 of 2023 is dismissed. No costs. Connected Miscellaneous Petition is closed.

07.02.2023

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

Note: *Register is directed to return the original copy of the Suit to the learned counsel for the revision petitioner.*

To

The Judge,
Special Sub Court,
Vellore.



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S.M.SUBRAMANIAM, J.

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