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C.R.P. Nos.4095 & 4097 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

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THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.4095 & 4097 of 2023

and

C.M.P.Nos.25028 & 25029 of 2023

K.Jayanthi

... Petitioner in both CRPs

Versus

D.Srinivasa Mudaliyar

... Respondent in both CRPs

COMMON PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 12.07.2023 passed in I.A.Nos.6 & 7 of 2023 in O.S.No.30 of 2020 on the file of the Additional District Court, Dharmapuri.

For Petitioner in both CRPs : Mr.V.Sakkarapani



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COMMON ORDER

The petitioner has filed these petitions to set aside the fair and decretal order dated 12.07.2023 passed in I.A.Nos.6 & 7 of 2023 in O.S.No.30 of 2020 on the file of the Additional District Court, Dharmapuri.

2. Before the trial Court the petitioner has filed an I.A.No.6 of 2023 under Order XVIII, Rule 3(A) of CPC to permit the petitioner to present himself as a witness during the subsequent stage of the defendant side witnesses and also filed an I.A.No.7 of 2023 under Order XVI, Rule 1(2) of CPC to summon the witness on the petitioner side. On considering both side submissions, the learned trial Judge dismissed the applications. Aggrieved the same the revision petitioner has filed these Civil Revision Petitions.

3. The learned counsel for the petitioner submitted that the petitioner has not approached the plaintiff and borrowed the money and she specifically denied the very execution of the mortgage deed and the plaintiff



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is trying to distort the repayment made to the petitioner by one Kalpana who is none other than the wife of the plaintiff. The said Kalpana used to get loan from the petitioner for urgent needs and repay the same with interest. He further submitted that said Kalpan repaid the loan amount of Rs.15,00,000/- to the petitioner by way of Bank transaction and the bank account is a joint account in the name of the plaintiff and his wife Kalpana and taking advantage of the transaction the plaintiff unlawfully created forged and fabricated mortgage deed and filed this vexatious suit with an ulterior motive to grab the suit property from the petitioner. The petitioner has neither executed the alleged mortgage deed nor received any money from the plaintiff. The petitioner has filed a detailed written statement narrating the facts and thereafter framed issues and the case was taken up for trial and the plaintiff examined himself and marked documents and thereafter the case was posted for defendant side evidence. The learned trial Judge without considering the fact erroneously dismissed the applications. Hence, he prays to allow these petitions.



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4. On considering both sides submissions the learned trial Judge held that the witnesses cannot be compelled to give evidence and the defendant also can not expect that the wife of the plaintiff would give evidence on his side. Therefore, the condition made by him was declined. Admittedly, by filing the written statement, the defendant raised defence that the wife of the plaintiff namely Kalpana used to borrow loan from him and on such circumstance and in continuance of the said transactions, the documents were fabricated by the husband of Kalpan, namely the plaintiff herein to prove his defence he is entitled to give summon to Kalpana. If at all summons are issued, and if she refused to come, then only the Court caan make such observation but before issuing summons the Court arriving at such conclusion that he cannot be compelled the witnesses to give evidence as such is a prematured one.

5. Therefore, the findings rendered by the learned trial Judge is set aside. I.A.s are allowed. Issue summons to the parties and proceed the matter in the manner known to law.



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WEB COPY 6. Accordingly, these Civil Revision Petitions are allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

21.11.2023

Index : Yes / No

Neutral Citation: Yes / No

Speaking/Non-speaking order

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1. The Additional District Judge, Dharmapuri.
2. The Section Officer,
VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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