



WEB COPY



CRP. No. 4045 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No. 4045 of 2022
in
O.S.No.2500 of 2020

S.Annamalai

... Petitioner

Versus

1.Dharmachand Jain
2.R.Balachandar

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the docket order dated 22.09.2022 made in memo filed by the 1st respondent / 1st defendant in O.S.No.2500 of 2020 passed by the learned XXIII Additional City Civil Court, Chennai.

For Petitioner	:	Ms. S. Menaka
For Respondents	:	Ms. R.V. Gayatri for Mr.P.B.Ramanujam for R2
	:	No representation for R1

ORDER

The Revision petitioner is challenging the docket order dated 22.09.2022 made in memo filed by the 1st respondent/1st defendant in O.S. No.



CRP. No. 4045 of 2022

2500 of 2020, passed by the learned XXIII Additional City Civil Judge,
Chennai.

2. Heard, Ms. Menaka, learned counsel appearing for the petitioner and Ms. R.V.Gayathri for Mr. P.B. Ramanujam, learned counsel appearing for the second respondent. Notice has been served but there is no representation on behalf of the first respondent.

3. The second defendant in O.S. No. 2500 of 2020 is the Civil Revision Petitioner herein. The first respondent in this Civil Revision Petition is the first defendant in the said suit. The suit in O.S. No.2500 of 2020 was filed by the second respondent in this Civil Revision Petition.

4. The suit in O.S. No. 2500 of 2020 was filed for a declaration to declare that the mortgage deed dated 13.02.2012 registered as document No. 757 of 2012 on the file of Sub-Registrar, Virugambakkam stands redeemed and to direct the first defendant to return the original title deeds relating to the sale deed dated 15.02.1982 bearing document No. 661 of 1982 registered on the file of Sub-Registrar, Kodambakkam and Patta of the plaintiff pertaining to the suit property and for costs.



CRP. No. 4045 of 2022

WEB COPY 5. In the suit, the first defendant/first respondent in this Civil Revision Petition has filed his written statement. Similarly, the second defendant/revision petitioner herein also filed the written statement repudiating the plaint averments. When the trial in the suit commenced and PW1 was examined in chief, a memo was filed by the first defendant in the suit/first respondent in this Civil Revision Petition to defer the cross-examination of PW1 by alleging that the plaintiff and the second defendant are colluding together to defeat the right of the first defendant. It was further stated that plaintiff and the second defendant are having common interest and sailing together against the first defendant/first respondent. Accepting the Memo filed by the first defendant, the court below passed the order dated 22.09.2022 directing the second defendant to cross-examine PW1 and thereafter, the first defendant side shall cross-examine PW1. Aggrieved by the said order dated 22.09.2022, the second defendant in the suit has come up with this Civil Revision Petition.

6. The learned counsel for the Petitioner submitted that the memo filed by the first defendant to defer the cross examination of Plaintiff side witness, is not maintainable in law. It is further submitted that the provision to defer the



cross examination is only available in Section 231 of Criminal Procedure Code and the order passed by the trial court is without jurisdiction. Section 231 of the Criminal Procedure Code reads as follows:

“231: Evidence for Prosecution:(1) on the date so fixed, the judge shall proceed to take all such evidence as may be produced in support of the prosecution.

(2) The Judge may, in his discretion, permit the cross examination of any witness to be deferred until any other witness or witness have been examined or recall any witness for further cross examination.”

7. According to the learned counsel, the trial court misconstrued the meaning of right to cross-examination which is intended to provide an opportunity to the adverse party to put material questions to the witness. Even if there is conflict of interest between the plaintiff and the second defendant, it will not confer any right to the first defendant to file the memo and to defer the cross-examination of PW1. The 1st respondent / 1st defendant filed the memo, praying to defer the cross examination of Plaintiff side witness by stating that the revision petitioner/2nd defendant is the son-in-law of the 2nd respondent/plaintiff and both have colluded together to defer the right of the first defendant. Even if it is so, it will not be a ground to defer the cross-examination of PW1, the cross-examination of P.W.1 can be deferred as per



CRP. No. 4045 of 2022

Order XVIII Rule 1 of CPC. As per Order XVIII Rule 1 of CPC, the plaintiff alone has the right to begin unless the defendant admits the facts alleged by the plaintiff. In the absence of the above situation, the court below ought not to have accepted the memo filed by the first defendant to defer the cross-examination of PW1. The plaintiff is seeking a relief against the 1st and 2nd defendants jointly, however, he settled the loan against the 1st defendant and the same has to be proved independently but the trial Judge allowed the memo filed on the side of the 1st defendant.

8. On a perusal of the plaint, it reveals that the relief was sought for against the 1st defendant. However, the 2nd defendant filed the written statement contending that he repaid the loan to the 1st defendant and such averment has to be proved by producing independent evidence. But the trial judge erroneously concluded that the 2nd defendant is sailing with the plaintiff, since both are father and son-in-law. Merely, they are closely related to each other, it does not denote that they are having common interest with regard to the suit claim. As mentioned above, the Second defendant has to independently prove his defence raised in the written statement about the discharge of loan on various occasion and it has got nothing to do with the deferring of the cross-examination of PW1. Therefore, the order passed by the



CRP. No. 4045 of 2022

trial court is liable to be set aside. However, considering the facts of the case and conduct of the parties, the parties are to be given an opportunity to prove their defence over the loan on the basis of documentary evidence.

9. In the result, the docket order dated 22.09.2022 passed by the court below in the memo filed by the first defendant is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous petition is closed. Both the parties are directed to appear before the trial Court. The learned trial Judge is directed to decide the suit on merits and dispose of the case, within a period of 6 months from the date of receipt of a copy of this order.

20.03.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rri



WEB COPY



CRP. No. 4045 of 2022

T.V.THAMILSELVI, J.

rri

To
1. The XXIII Additional City Civil Court,
Chennai.

C.R.P.No. 4045 of 2022
and
C.M.P.No.20981 of 2022

20.03.2023