

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.408 of 2023

Urudass, S/o.Esakkimuthu Konar .. Petitioner
Versus

Krishnasamy, S/o. Esakkimuthu Konar .. Respondent

Prayer :- Petition filed under Article 227 of the Constitution of India, against the petition and order dated 29.04.2022, passed by the learned Sub-Judge, Valliyoor, in R.P.No.8 of 2022 in O.S.No.65 of 2009.

For Petitioner : Mr.K.Muthurakkan

For Respondent : Mr.M.Thangadurai

ORDER

The petitioner has filed this Civil Revision Petition against the order dated 29.04.2022, passed by the Sub-Court, Valliyoor, in R.P.No.8 of 2022 in O.S.No.65 of 2009.

2. The reason given in the impugned order dated 29.04.2022, reads as under:-

" Respondent present. Memo filed stating he is taking steps for filing appeal recorded. Hence, petition dismissed."

3. The respondent herein had filed O.S.No.65 of 2009. The said suit was dismissed by the Trial Court, by its judgment and decree, dated 11.03.2019. Aggrieved over the same, a further appeal was filed in A.S.No.27 of 2020, which was also dismissed on 12.08.2021. Under these circumstances, the petitioner herein, who was the defendant in O.S.No.65 of 2009, filed R.P.No.8 of 2022 before the Trial Court for returning of exhibits marked by him as Exs.B.1 to B.13.

4. The request of the petitioner has been rejected based on the Memo filed by the respondent before the Trial Court. The judgment and decree of the 1st Appellate Court in A.S.No.27 of 2020 is dated 12.08.2021. If an appeal was filed, it ought to have been numbered by now before this Court as Second Appeal.

5. Therefore, in the absence of any document to substantiate that a Second Appeal has been filed, the prayer for return of documents cannot be rejected merely based on the strength of a Memo. Hence, this Court is inclined to dispose of the Civil Revision Petition, modifying the impugned order, by directing the Trial Court to return the documents to the petitioner at the expiry of 45th day from the date of receipt of this order, subject to the condition that no Second Appeal has been filed by the respondent and numbered before this Court by the respondent. The petitioner shall serve a Memo before the Trial Court at the expiry of 45th day after serving a copy of the same on the respondent/plaintiff. In case, no appeal is filed by the

respondent/plaintiff by such time, the Trial Court shall return the documents to the petitioner after obtaining an undertaking to re-file the same before it. The Trial Court shall, however, retain photocopy of the documents for records.

6. This Civil Revision Petition stands disposed of with the above direction.

No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No

16.03.2023

To

The Subordinate Judge,
Valliyoor.

C.R.P.(MD)No.408 of 2023

C.SARAVANAN, J.

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Order made in
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16.03.2023