



C.R.P.No.2214 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.2214 of 2024

M.Dhamodaran

... Petitioner

Vs.

M.Varadaraju

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to call for records and set aside the Docket order passed in I.A.SR.No.12475 of 2023 in I.A.No.1 of 2023 in O.S.No.27 of 2010 dated 30.04.2024 on the file of District Principal Judge at Chengalpattu by allowing this Civil Revision Petition.

For Petitioner

: Mr.T.V.Badrinarayanan

ORDER

This Civil Revision Petition has been filed to set aside the Docket order passed in I.A.SR.No.12475 of 2023 in I.A.No.1 of 2023 in O.S.No.27 of 2010 dated 30.04.2024 on the file of District Principal Judge at Chengalpattu.



C.R.P.No.2214 of 2024

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2.The petitioner as plaintiff has filed a suit in O.S.No.27 of 2010 against his brother/respondent herein seeking to set aside the settlement deed dated 01.06.2006 registered as Doc.No.3328 of 2006 in S.R.O. Neelankarai and for mandatory injunction directing the respondent to hand over originals of two sale deeds both dated 06.06.2003 registered as Doc.No.1768 of 2003 in S.R.O. Neelankarai and also for permanent injunction restraining the respondent from interfering with peaceful possession and enjoyment of the suit property.

3.The contention of the petitioner is that the suit in O.S.No.27 of 2010 was dismissed on 09.01.2023 for the reason that the counsel on record failed to appear on that day. Thereafter on 11.04.2023, the petitioner filed I.A.No.1 of 2023 in O.S.No.27 of 2010 to set aside the order dated 09.01.2023 dismissing the suit for default. The said I.A.No.1 of 2023 was considered on 25.07.2023 and the petitioner was directed to pay a cost of Rs.500/- to the District Mediation Centre, Chengalpet on or before



C.R.P.No.2214 of 2024

14.08.2023, which was not noticed by the counsel due to oversight, which resulted in non compliance of the conditional order and I.A.No.1 of 2023 was dismissed on 18.08.2023. The petitioner came to know the dismissal of I.A. through E-court adjudication in O.S.No.115 of 2023, which was filed by the respondent against the petitioner based on the settlement deed.

4.The petitioner claims the property based on a registered Will and counter claim was made by his brother/respondent based on an alleged settlement deed. Hence, the petitioner filed two interlocutory applications in I.A.SR.No.12475 of 2023 seeking extension of time for payment of cost and I.A.SR.No.12476 of 2023 to set aside the order dated 16.08.2023 as confirmed by order dated 18.08.2023 in I.A.No.1 of 2023. The Lower Court observed that I.A.SR.No.12475 of 2023 was returned for defects on 10.10.2023 with a direction to represent the same within one month. But this application was represented on 13.03.2024. This shows the lethargic attitude of the petitioner/plaintiff. Further observed that I.A.SR.No.12476 of 2023



C.R.P.No.2214 of 2024

was filed to set aside the order passed in I.A.No.1 of 2023. The suit is of the year 2010, which was dismissed for default on 09.01.2023. I.A.No.1 of 2023 filed for restoration of suit, was ordered for cost, but not paid. Finding that the reasons given by the petitioner are not acceptable, the learned Principal District Judge, Chengalpattu, by a docket order dated 30.04.2024, rejected both the applications at SR stage, against which, the present petition has been filed.

5.The learned counsel for the petitioner submitted that the respondent filed O.S.No.115 of 2013 for the similar reliefs in respect of the same suit property. The said suit was dismissed for default on 15.11.2023 in which, the respondent filed I.A.No.1 of 2024 for restoration of the suit and the same is pending. He further submitted that both the suits are tried together, since it is the same suit property, the petitioner claims based on a Will and respondent claim based on a settlement deed. Anomaly would be created, if this petition is not entertained and O.S.No.115 of 2013 filed by the



C.R.P.No.2214 of 2024

respondent is allowed to proceed. He further submitted that he is ready to pay even higher cost and he will not be a reason for further delay. His plea is that both I.A.SR.Nos.12475 and 12476 of 2023 to be entertained, considered and thereafter orders to be passed on merits.

6.Considering the submissions made and on perusal of the material available on record, it is seen that the petitioner filed O.S.No.27 of 2010, his brother/respondent herein filed O.S.No.115 of 2013 for the same property. The petitioner claims the suit property based on a Will and respondent claims the suit property based on a settlement deed. It is seen that in both the suits, pleadings completed, issues framed and trial to commence. Further the learned counsel for the petitioner submitted that he has got no objection in allowing I.A.No.1 of 2024, which is pending for restoration of the suit in O.S.No.115 of 2013. In view of the same, this Court is inclined to set aside the order dated 30.04.2024.



C.R.P.No.2214 of 2024

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7. Accordingly, the order dated 30.04.2024 passed in I.A.SR.Nos.12475 and 12476 of 2023 in I.A.No.1 of 2023 in O.S.No.27 of 2010 by the learned Principal District Judge, Chengalpet is set aside. The suit in O.S.No.27 of 2010 is restored to the file of the Trial Court. The petitioner is directed to pay a sum of Rs.5,000/- to the District Mediation Centre, Chengalpet within a period of two weeks from the date of receipt of a copy of this order and produce proof of the same before the learned Principal District Judge, Chengalpet. On receipt of the same, the learned Principal District Judge, Chengalpet to complete the proceedings in both O.S.No.27 of 2010 and O.S.No.115 of 2013 within a period of six months.

8. With the above directions, this Civil Revision Petition is Allowed. No costs.

19.06.2024

Index : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

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Note: Issue order copy on 20.06.2024



C.R.P.No.2214 of 2024

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To
The Principal District Judge,
Chengalpet.



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C.R.P.No.2214 of 2024

M.NIRMAL KUMAR, J.

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C.R.P.No.2214 of 2024

19.06.2024