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CRP.Nos. 2366 & 2368 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Civil Revision Petition Nos. 2366 and 2368 of 2022

and

CMP.Nos. 12158 and 12163 of 2022

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1. S. Megavarnan

2.Selvi

3.Anbarasan

4.Yasodha

.... Petitioners

[In both CRPs]

Versus

H. Nishanthi @ Nishanthini

...Respondent

[In both CRPs]

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constituion of India, prays to set aside the order and decree dated 16.06.2022 made in I.A.Nos. 6 & 7 of 2022 in O.S.No. 33 of 2018 on the file of Subordinate Judge, Arakkonam.

In both CRPs:

For Petitioners : Mr.A. Gouthaman

For Respondent : M/s. Shree Narasimhacharry

For M/s. TVJ Associates



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COMMON ORDER

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These Civil Revision Petitions have been filed by the petitioners/defendants seeking to set aside the fair and decretal order dated 16.06.2022 made in I.A.Nos. 6 and 7 of 2022 in O.S.No. 33 of 2018 passed by the learned Subordinate Judge, Arakkonam, wherein, the petitioners/defendants herein have filed I.A.Nos. 6 of 2022 to re-open the plaintiff's side evidence and I.A.No.7 of 2022 to re-call PW1 for further cross-examination. After perusing the records, the trial Court dismissed both the applications by order dated 16.06.2022.

2. The petitioners are the defendants and the respondent is the plaintiff in the original suit.

3. The respondent/plaintiff has filed the suit in O.S.No. 33 of 2018 on the file of Subordinate Judge, Arakkonam, for the relief of recovery of money based on the registered mortgage deed, and the petitioners/defendants



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have taken specific plea in the written statemenet that the mortgage deed was

executed in favour of the respondent/plaintiff, for obtaining loan in respect of

"chit transactions" between the relative of the defendants' family member one

Mrs.Seetha and she refused to cancel the mortgage deed and return the 2nd

defendant's SBI cheque after completion of chit transactions. According to

the petitioners, certain important questions were omitted to put to PW1 and

certain documents also to be marked through her in respt of "chit

transactions" between the petitioners and one Mrs.Seetha and they are very

much essential to decide the issues in the suit. The petitioners/defendants

had cross-examined initially, but the previous counsel for the petitioners, has

not put questeions in respect of the "chit transactions" and thereby, the PW1

has to be recalled for elaborate cross-examination. Eventually, the

respondent/plaintiff side witnesses were examined and the same was closed.

Therefore, the matter has to be re-opened to cross examine the plaintiff's side

evidence of PW1 and the PW1 has to be cross-examined.



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4. According to the respondent, he has filed the suit for the relief of recovery of money through registered mortgage deed. The alleged "chit transactions" are noway connected to the suit and the present suit only based on the registered mortgage deed and there is no relationship between the petitioners and one Mrs.Seetha. However, PW1 had already cross-examined and thereafter, the petitioners have filed petitions to reopen the case and to recall the PW1 and the same were dismissed by the trial Court by order dated 16.06.2022. Subsequently, after completion of defendants side evidence, the matter was adjourned for arguments. Thereafter, the petitioners have filed applications to re-open the case of plaintiff's side as to cross-examine the PW1, the trial Court dismissed both the applications after considering all the aspects. Therefore, the above Civil Revision Petitions are liable to be dismissed.

5. The learned Counsel appearing for the petitioners/defendants contended that the respondent/plaintiff has filed the suit for recovery of



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money based on the registered mortgage deed, which was executed for the "chit transactiions" between the petitioners and one Mrs.Seetha and the same was categorrically pleaded in the written statement, but, during the course of his cross-examination of PW1 the same has not been effectively cross-examined. For the purpose the case, has to be reopened and PW1 has to be recalled for further cross-examination by the petitioners/defendants, but, the trial Court without considering the case of the petitioners/defendants, simply dismissed the petitions and declined to reopen the case and recall the PW1 for further cross-examination. Therefore, the order of the trial Court is liable to be set aside.

6. The learned Counsel appearing for the respondent/plaintiff contended that the respondent/plaintiff has filed the suit for the relief of recovery of money through registered mortgage deed and now, the matter was posted for arguments. Already, the matter was posted for examination of witnesses on the side of the defendants on various dates but these petitioners



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filed for re-opening the case and recalling PW1 for further cross-examination

after a huge delay and both the applications were dismissed by the trial Court. The above two applications have been filed by the petitioners/defendants only to drag on the proceedings and to fill up the lacuna. The trial Court after considering the stage of the case passed a reasoned order. Therefore, the above Civil Revision Petitions are liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. In this case, the petitioners are the defendants in the main suit and the main suit was filed by the respondent/plaintiff for the relief of recovery of money based on the registered mortgage deed. According to the petitioners, they had taken plea in the written stateemnt that the registered mortgage deed was executed for the "chit transactions" between the petitioners/defendants and one Mrs.Seetha. The plaintiff is the relative of the



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said Seetha and thereby, the mortgage deed was executed and therefore, in order to prove the same, the plaintiff's side witness PW1 has to be cross-examined effectively. The previous counsel had not cross-examined the PW1, extensively. Therefore, the PW1 has to be recalled for further cross examination. According to the respondent/plaintiff, already PW1 was cross-examined and now the case is posted for arguments, at this stage these petitions were filed only to delay the proceedings.

9. This Court carefully perused the records, it is seen that the petitioners had filed two applications i.e., to reopen the case of the plaintiff's side evidence and to recall PW1 for further cross examination and the applications were dismissed by order dated 16.06.2022. During the course of cross-examination of PW1 already put questions in respect of "chit transactions". The trial Court has also already given ample opportunities to the petitioners/defendants. Thereafter, the case was posted for arguments after completion of evidences on both sides and now, the case was posted for



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arguments. At this juncture, these applications have been filed to re-open the case and for further cross-examination of PW1 in respect of "chit transactions".

10. It is settled law that the petitioners/defendants can prove their own case through their evidence and not mere cross-examination alone. Already, sufficient opportunities were granted to the petitioners/defendants to prove their case. The PW1 was cross-examined by the defendants for more than two times. While that being the case, ample opportunities were granted to the petitioners/defendants and now, after completion of evidences on both sides, the suit was posted for arguments. At this stage, these two applications have been filed by the petitioners/defendants without assigning valid reasons. The trial Court has also discussed all the aspects and passed an elaborate and reasoned order. Therefore, the order passed by the trial Court is in order and it does not warrant interference. Hence, there is no merit in the civil revision petitions and the same deserves to be dismissed.



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11. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes

Speaking order: Yes

Neutral Citation: Yes

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