



C.R.P. (PD) Nos.2540 and 2610 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition (PD) Nos.2540 and 2610 of 2023
and C.M.P.Nos.15716 and 16097 of 2023

K.Goundappa Gounder

.. Petitioner in
both the C.R.P.'s

Versus

M.Palaniswamy

.. Respondent in
both the C.R.P.'s

Prayer in C.R.P.No.2540 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 16.03.2023 made in I.A.No.3 of 2023 in O.S.No.131 of 2017 on the file of the 1st Additional District Judge, Coimbatore.

Prayer in C.R.P.No.2610 of 2023 : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 16.03.2023 made in I.A.No.4 of 2023 in O.S.No.131 of 2017 on the file of the 1st Additional District Judge, Coimbatore.

In both the C.R.P.'s:



C.R.P. (PD) Nos.2540 and 2610 of 2024

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For the Petitioner : Mr.N.Ishtiaq Ahmed

For the Respondent : Mr.E.Rajesh Kanna

COMMON ORDER

This Civil Revision Petition arises against the I.A.Nos.3 and 4 of 2023 dated 16.03.2023 in dismissing the petition filed to reopen the evidence of P.W.1 and to recall him for further examination.

2. O.S.No.131 of 2017 is a suit for specific performance of an agreement of sale dated 19.01.2016. The plaintiff claims that he entered into an agreement with the defendant and paid a sum of Rs.41,60,000/-. As the defendant did not honour the sale agreement, he issued a notice on 01.11.2016, calling upon the defendant to execute the sale deed. The defendant issued reply notice on 18.11.2016. As the relief that the plaintiff had sought for did not fructify, he presented O.S.No.131 of 2017 on the file of the 1st Additional District Judge, Coimbatore.



C.R.P. (PD) Nos.2540 and 2610 of 2024

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3. The defendant filed a written statement and proceeded further.

Issues were framed and thereafter, the parties were pushed to trial. The plaintiff entered the witness box and deposed that if the amount of Rs.41,60,000/- is returned to him with interest at the rate of 2 % per month together with court expenses, he would be satisfied. Thereafter, applications were filed to reopen the plaintiff's side evidence and to recall P.W.1 and to file additional proof affidavit. These two applications were numbered as I.A.Nos.3 of 2023 and 4 of 2023.

4. On issuance of notice to the defendant, he pleaded that the plaintiff is attempting to resile from the deposition made during the course of cross examination. The learned Judge after extracting the admission made by the plaintiff, did not agree with him and dismissed the petitions. Hence, the revision.

5. Heard, Mr.N.Ishtiaq Ahmed, for the Civil Revision Petitioner and Mr.E.Rajesh Kanna for the respondent.



C.R.P. (PD) Nos.2540 and 2610 of 2024

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6. While trial Courts must be liberal in dealing with applications for reopening and recalling of evidence when the proceedings are at the stage of trial, it should be cautious and not to permit the parties to resile from the evidence tendered during the course of trial.

7. Mr.Ishtiaq Ahmed, points out that in the reply notice, the defendant had admitted to execute a sale deed.

8. If that be the situation, If I were to permit the petitioner to reopen the evidence and permit to file an additional proof affidavit asserting his claim for specific performance, it would amount to permitting a party to withdraw the sworn statement that are made while in the witness box. The evidence cannot be permitted to be withdrawn unless it is made inadvertently. The plaintiff, who is aged about 79 years and cannot be said to be a person of unsound judgment. Having taken a call while in the witness box, he should not be permitted to withdraw the same.



C.R.P. (PD) Nos.2540 and 2610 of 2024

WEB COPY

9. In the light of the above discussion, I do not find any error in the orders passed in I.A.Nos.3 of 2023 and 4 of 2023 dated 16.03.2023. In the result, this Civil Revision Petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

10. The learned Judge, while deciding the suit will take into consideration the principles of equity and decide amount the plaintiff would be entitled to. It should be remembered that the plaintiff had lost the benefit of the said amount for over a period of eight years.

29.10.2024

Index : Yes / No
Internet:Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
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To
The 1st Additional District Judge, Coimbatore.



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C.R.P. (PD) Nos.2540 and 2610 of 2024

V.LAKSHMINARAYANAN, J.,

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29.10.2024