



C.R.P.No.3056 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3056 of 2022
and C.M.P.No.11549 of 2023

KSubbarayalu

... Petitioner

-Vs-

1.V.C.Shanmugam
2.Vee Chidambaranar Educational Trust
Managing Trustee, No.3/68, Kovil
Street, Sathankuppam Village
Vellakerai, Cuddalore District.
3.S.Elavarasi
4.S.Suresh
5.Sumathi
6.S.Sridar

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 22.01.2022 passed in I.A.No.690 of 2021 in O.S.No.140 of 2020 on the file of the Principal District Court, Cuddalore.

For Petitioner	:	Mr.R.Rajavelavan
For Respondent	:	Mr.G.Chandrasekar
		-for RR 1, 3 to 6
		R2 - Served, no appearance

ORDER

The present revision arises against the order dated 22.01.2022 passed in I.A.No.690 of 2021 in O.S.No.140 of 2020 on the file of the learned Principal District Court, Cuddalore.



2. The civil revision petitioner is the plaintiff in the suit. He has filed the suit for recovery of a sum of Rs.1,58,63,333/- from the defendants. The basis of this claim is that the plaintiff, as a mortgagee, had given the aforesaid amount to the mortgagors who are the defendants. As the defendants defaulted in payment of the same, he has come forth with the suit for foreclosure and for passing of preliminary decree.

3. The defendants entered appearance and the first defendant filed a written statement on his behalf and other defendants. In the written statement, his plea is that he is not liable to pay Rs.1,58,63,333/- and only liable to pay Rs.58,85,000/- towards part satisfaction of the amount. Invoking Order XXIV Rule 3 of C.P.C., he has deposited a sum of Rs.30,00,000/-. On coming to know of the deposit, the plaintiff filed an application to withdraw this amount. This application came to be dismissed, against which the present revision.

4. Heard Mr.K.Rajavelavan for the petitioner and Mr.G.Chandrasekar for respondents 1 and 3 to 6.

5. The narration of the aforesaid facts would go to show that the first defendant has admitted to the fact that he has received a sum of Rs.58,85,000/- from the plaintiff. In part satisfaction of the aforesaid amount, he has deposited



Rs.30,00,000/- . This is not a case under Order XXIV Rule 4(2), where the plaintiff has accepted the deposit of Rs.30,00,000/- as full quit of his claim. In fact, he cannot make such a plea because, even according to the defendant, he still owes a sum of Rs.28,85,000/- to the plaintiff. This is a simple application invoking Rule 165 of the Civil Rules of Practice for the purpose of withdrawal of the amount deposited to the credit of the suit. Unnecessarily, other issues, which are absolutely irrelevant to the facts of the case, have been introduced. Whether the claim is Rs.1,58,63,333/- or Rs.58,85,000/-, the amount of Rs.30,00,000/- that has been deposited is below the amount which the defendant himself has admitted to be due to the plaintiff. By keeping it in Court deposit, the plaintiff loses interest everyday.

6. Mr.G.Chandrasekar, learned counsel for the defendants/respondents would submit that the plaintiff had taken several blank promissory notes, cheques and other documents and he might misuse the same, and thereby affect the level playing field between the parties.

7. That is an issue which has to be gone into at the time of trial. If the plaintiff has documents which are blank, it is always open to the defendants to prove the same and get them returned at the time of passing of the preliminary decree in the suit. This does not mean that the plaintiff is not entitled to receive the amounts which are admittedly due to him. The learned Principal District Judge had not looked into this aspect of the case that Rs.30,00,000/- anyway lies within



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the amount which the defendant has admitted as due to the plaintiff. The money is the plaintiff's and it need not be lying in the Court deposit, and thereby nobody profits from the same.

8. In fine, the order of the learned Principal District Judge, Cuddalore dated 22.01.2022 in I.A.No.690 of 2021 in O.S.No.690 of 2021 is set aside. The application will stand allowed and the plaintiff is entitled to receive the amount deposited by the first defendant in part satisfaction of the amount due to him. Needless to add that the first defendant is entitled to raise all the defences that are open to him and prove that the plaintiff has blank documents which belong to him and is entitled for restoration of the same to his custody. With the above directions, the C.R.P., is allowed. No costs. Consequently, connected miscellaneous petition is closed.

25.04.2024

Index : Yes/No
Neutral Citation : Yes/No
KST

Note : Issue order copy on 30.04.2024

To

The Principal District Judge
Cuddalore.



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V. LAKSHMINARAYANAN, J.

KST

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