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C.R.P.(PD)No.4451 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4451 of 2024
and C.M.P.No.24796 of 2024

Raman

.. Petitioner

Vs

1. Poongavanam (died)
2. Rajathi
3. Yuvaraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 05.09.2024 in I.A.No.4 of 2024 in O.S.No.6 of 2019 on the file of the Principal District Court at Tiruvannamalai.

For Petitioner : Mr.S.V.Karthikeyan

For Respondent : Mr.C.Munusamy



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ORDER

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This civil revision petition arises against the order passed by the learned Principal District Judge at Tiruvannamalai in I.A.No.4 of 2024 in O.S.No.6 of 2019, dated 05.09.2024.

2. The civil revision petitioner is the plaintiff in the suit. He presented O.S.No.6 of 2019 seeking for specific performance of an agreement of sale said to have been entered into on 31.01.2018. He pleads that the document is a registered one and since the defendants are evading the execution of a sale deed, pursuant to the agreement, he was constrained to present the suit.

3. It is not in dispute that the plaintiff has completed his examination and so have the defendants. The matter was listed for arguments. At that stage, the plaintiff took out an application in I.A.No.2 of 2024 seeking to recall P.W.2/Govindaraj. The reason given for recalling P.W.2 was that, pending the suit, the defendants had agreed to refund the advance amount. There was cell phone conversation between P.W.2/Govindaraj & the defendants and the plaintiff wanted to bring on



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record the contents of the conversation. This was opposed by the defendants.

4. The learned Trial Judge, on the basis of the affidavit and petition, came to a conclusion that there is absolutely no merits in the application. Hence, he dismissed the application on 07.06.2024.

5. Thereafter, the plaintiff filed another application in I.A.No.4 of 2024 seeking for permission of the Court to examine the document writer of the sale deed to speak about the amount that was allegedly received by the defendants. In this application, the learned Judge ordered notice. It was stoutly opposed by the defendants by filing a detailed counter.

6. The learned Trial Judge, took into consideration that the previous application had been dismissed, held that the entire idea of the plaintiff is to drag on the matter and ensure that the suit is not taken to its logical conclusion. Therefore, he dismissed the application.

7. Aggrieved by the said order dated 05.09.2024 in I.A.No.4 of 2024 in O.S.No.6 of 2019, the plaintiff is on revision before me.



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8. I heard Mr.S.V.Karthikeyan for the civil revision petitioner and Mr.C.Munusamy for the respondents. The counsels reiterate the contentions they had made before the learned Trial Judge.

9. Mr.S.V.Karthikeyan pleads that if an opportunity is granted to examine the scribe, then he would grab that opportunity and co-operate with the Court and conclude the suit at an early date.

10. Mr.C.Munusamy points out that, the entire idea of the plaintiff is to keep the pot boiling and the application is an attempt to fill up the lacuna that exists in the evidence.

11. The suit is one for the specific performance of an agreement of sale. At the stage of trial, a party should be given ample opportunity to place before the Court all the available, oral and documentary, evidence that he has in his possession. The previous attempt by the plaintiff in I.A.Nos.2 & 3 of 2024 seeking to reopen and recall the evidence of P.W.2 was not on the basis of any matter touching upon the suit. The basis was an alleged conversation that is said to have been taken place between the P.W.2 and the 3rd defendant. A matter which takes place, after the trial in



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the suit has concluded, should not normally be taken note of by the Court. It was in those circumstances, the learned Trial Judge came to dismiss the application in I.A.No.2 of 2024 on 07.06.2024.

12. I have carefully considered the submissions of both sides and gone through the entire records.

13. It is clear from the averments made in the affidavit that the petitioner seeks to re-open the case only for the purpose of tendering the evidence vis-a-vis the amounts that are said to have been received by the defendants. Unlike the previous application, he is not intending to introduce a fact which had not been pleaded earlier.

14. The plea of lacuna very strongly urged by Mr.C.Munusamy does not appeal to me. The parties are still at the stage of trial and the question of lacuna in evidence would arise only if a decree had been passed against the party, on the basis of the evidence, that is sought to be filled up at the time of appeal. Since the matter is still before the Trial Court, I am inclined to grant an opportunity to the civil revision petitioner to examine the scribe. However, since the plaintiff wants the luxury of examining the scribe, he would necessarily have to pay for it.



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15. In the light of the above discussions, the civil revision petition

stands allowed on the following terms:

(i) The order passed by the learned Principal District Judge at Tiruvannamalai in I.A.No.4 of 2024 in O.S.No.6 of 2019 dated 05.09.2024 is set aside on the condition that the plaintiff pays to the defendants a sum of Rs.10,000/- (Rupees Ten thousand only) on or before 22.11.2024.

(ii) On production of the proof of payment, the learned Trial Judge shall permit the plaintiff to examine the scribe specifically with respect to the alleged payment said to have been made by the plaintiff to the defendants on 25.11.2024.

(iii) The learned Principal District Judge at Tiruvannamalai is requested not to adjourn the matter in order to enable the plaintiff to produce his witness on that day.

(iv) After examination of the scribe, the Court below is requested to hear the parties in the suit and pronounce judgment on or before 13.12.2024.

(v) In case cost of Rs.10,000/- is not paid by the plaintiff, the civil revision petition will stand dismissed without further notice to this Court.



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(vi) The learned Trial Judge shall act on the web copy of this order.

WEB COPY No costs. Consequently, connected miscellaneous petition is closed.

18.11.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

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To

The Principal District Judge at Tiruvannamalai.

V. LAKSHMINARAYANAN,J.



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