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C.R.P.(PD)No.4736 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.11.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4736 of 2024

S.A.Swarnalatha

....

Petitioner

Vs

E.Sivakami

....

Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the C.R.P. direct the numbering of I.A.C.F.R. No.5148 of 2024 in O.S.No.30 of 2021 on the file of I Additional District Munsiff, Erode.

For Petitioner : Mr.K.Govi Ganesan

ORDER

This Civil Revision Petition challenges the order passed by the learned I Additional District Munsif in I.A.C.F.R.No.5148 of 2024 in O.S.No.30 of 2021.



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2. O.S.No.30 of 2021 is a suit for declaration that the Sale Deed executed by the 1st defendant in favour of the 2nd defendant on 14.09.2020 in Document No.4619 of 2020 is null and void *ab initio* and for permanent injunction restraining the 2nd defendant from interfering with the peaceful possession of the plaintiff and for permanent injunction restraining the 2nd defendant from alienating the property in favour of any 3rd party on the strength of the document impugned in the suit.

3. The 1st defendant is the vendor of the 2nd defendant. He remained *exparte* in the suit. The 2nd defendant was also set *exparte*. Therefore, the 2nd defendant filed I.A.C.F.R.No.5148 of 2024 invoking Order IX Rule 7 of the Code of Civil Procedure. The learned trial Judge returned the said application with the following endorsement:

"The suit is reserved for Judgment. Then, how this petition is maintainable to be stated. Hence returned."

4. Challenging the same, the present revision.

5.Mr.K.Govi Ganesan, urges that there is no bar for entertaining a petition under Order IX Rule 7 at any stage of the proceeding. This especially so when the 2nd defendant has presented the application along



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with his written statement.

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6. I have carefully considered the submissions made by Mr.K.Govi Ganesan.

7. This plea requires me look at Order IX Rule 7 of Code of Civil Procedure. This provision enables a Trial Court to put the clock back for the defendant, if he shows a good cause for not being present, when the suit had been adjourned for hearing. In the facts of the present case, it is clear that not only were the defendants set exparte but the Court proceeded to record exparte evidence and has reserved the suit for Judgment. Therefore, the Court has not adjourned the matter for "hearing" but for Judgment. When the case is posted for Judgment, there is no question of hearing of parties. That stage has long gone by. Therefore, I do not find error in the Order of the learned Trial Judge, in returning the application under Order IX Rule 7 stating that it is not maintainable, since the suit has been reserved for judgment. Therefore I have not no other option than to confirm the order of the learned I Additional District Munsif in I.A.C.F.R.No.5148/2014 in O.S.No.30/2021.



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8. I should add that for the mere fact that the application under Order IX Rule 7 of C.P.C. has been rejected, the civil revision petitioner is not remediless. In case the suit is decreed exparte, it is always open to the defendants to file an application under Order IX Rule 13 to set aside the exparte decree.

With the above observations, this Civil Revision petition is dismissed. No costs.

26.11.2024

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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To

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The I Additional District Munsif,
Erode.

V. LAKSHMINARAYANAN,J.



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