



C.R.P.(MD)No.1958 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1958 of 2024

and

C.M.P.(MD)No.11133 of 2024

R.Senthil

... Petitioner/Petitioner/Defendant

Vs.

S.Nallathambi

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records resulting in the impugned fair and decreetal order dated 04.03.2024 passed in I.A.No.1 of 2023 in O.S.No.345 of 2019 on the file of the I Additional District Judge, Madurai and to set aside the same as illegal and allow this civil revision petition.

For Petitioner : Mr.C.Sundaravadivel

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ORDER

The revision petitioner is figuring as the defendant in O.S.No.345 of 2019 on the file of the I Additional District Court, Madurai. The suit was



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instituted for recovery of a sum of Rs.22,60,000/- on the strength of a mortgage created on 25.06.2014. The case is now posted for arguments. At this stage, the defendant filed I.A.No.1 of 2023 for reopening the suit to enable him to adduce evidence. The Court below dismissed I.A.No.1 of 2023 vide order dated 04.03.2024. Challenging the same, this civil revision petition came to be filed.

2.The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds of revision.

3.The prime argument advanced by the learned counsel for the petitioner is that the petitioner met with an accident in the year 2020 and that he underwent surgery and that he is still under treatment for his disability and that is why, he could not adduce evidence earlier. This contention was urged before the Court below also. No medical record was marked. Even before this Court, there is no medical certificate indicating that the petitioner has been suffering from physical disability for the last four years. The Court below has given the following reason for dismissing I.A.No.1 of 2023:-

“6) POINT:-

This petition is filed by the petitioner/defendant praying to reopen the suit in order to enable him to adduce evidence. The suit is filed by the



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respondent/plaintiff against the petitioner/defendant praying for passing of Preliminary Mortgage Decree for a sum of Rs.22,60,000/- with interest. The defendant has filed written statement and issues were framed and suit was posted for trial. However, at the stage of trial, the respondent/plaintiff has filed the petition in I.A.No.232/2021 praying this Court to direct the defendant to begin the case in view of the defence taken by the petitioner/defendant in the written statement. In the said petition, the petitioner/defendant had not filed any counter and has made endorsement to the said effect and accordingly, the said petition was allowed on 08.03.2022. On the same date, the petition filed by the respondent/plaintiff so receive reply statement has been allowed in I.A.No. 231/2021 and the reply statement of the respondent/plaintiff was received on 08.03.2022 Likewise, the petitioner/defendant had also filed Additional Written Statement on 08.03.2022 and the same has been received. Pursuant to the order in I.A.No.232/2021, this Court has given ample opportunities to the petitioner/defendant to let in his side evidence on 05.04.2022, 13.04.2022, 03.09.2022, 14.09.2022, 29.09.2022 and 13.10.2022, but he has not chosen to let in any oral evidence and hence, this Court has closed defendant side evidence on 13.10.2022 and adjourned the case for plaintiff side evidence. The plaintiff has examined himself as P.W.1 on 04.11.2022 and he was cross-examined by the petitioner/defendant on 07.12.2022 and 15.03 2022. With this, the respondent/plaintiff has closed his side evidence. Thereafter, instead of adjourning the case for arguments, again the case was inadvertently posted for defendant side evidence on 06.06.2023. 26.06.2023, 28.07.2023, 21.08.2023, 13.09.2023 and 21 09.2023 and since the petitioner/defendant has failed to let in evidence, his side evidence was closed by this Court and the suit was posted for arguments. At the stage of argument the petitioner/defendant has come forward with the present



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petition. The petitioner/defendant has prayed to allow this petition on the ground that 21.09.2023, he went for medical checkup and could not appear in Court to let his side evidence. However, no medical document has been filed to prove same. A perusal of the Notespaper reveal that the petitioner/defendant had been given several opportunities but has failed to utilize the same. The conduct the petitioner/defendant goes to show that he is dragging on the suit. Therefore, this Court is not inclined to allow this petition.

In the result, this petition is dismissed.”

4.The reasons given by the Court below are sound and convincing. Interference is not warranted and the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The I Additional District Court,
Madurai.



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G.R.SWAMINATHAN, J.

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