



C.R.P.(MD)No.2357 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2357 of 2024

Sivakumar

... Petitioner

Vs.

K.Nesan

... Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, against the order made in Civil Miscellaneous Appeal No.4 of 2023, dated 27.04.2024, passed by the Learned 4th Additional Subordinate Judge, Trichy, confirming the fair and decretal order made in I.A.No.1 of 2021 which was filed under Order IX Rule 9 of C.P.C. in O.S.No.448 of 2019 by order, dated 08.12.2022.

For Petitioner

: Mr.B.Jameelarasu

For Respondent

: Mr.H.Lakshmi Shankar



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ORDER

The present civil revision petition is filed by the plaintiff is the suit against the order dated 27.04.2024 passed in C.M.A.No.4 of 2023 on the file of 4th Additional Sub Court, Trichy, confirming the Fair and Decreetal order dated 08.12.2022 passed in I.A.No.1 of 2021 in O.S.No.448 of 2019.

2. The suit is filed by the plaintiff / revision petitioner herein for injunction. The plaintiff is claiming to be a cultivating tenant. However, the defendant has vehemently objected to such claim of the plaintiff and submitted that the plaintiff is not a cultivating tenant because the plaintiff's mother had purchased a portion of the property, i.e., 30 cents in S.F.No.144/4.

3. The plaintiff had failed to appear of the date of hearing, hence the same was dismissed for default. Thereafter the plaintiff had filed I.A.No.1 of 2021 in O.S.No.448 of 2019 under Order IX Rule 9 of C.P.C.



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4. The defendant submitted that the plaintiff is not interested in conducting the case and had dragged on the proceedings. The suit was filed in the year 2015 and the same was transferred in the year 2019 for want of appropriate jurisdiction. Thereafter, it was renumbered as O.S.No.448 of 2019. In fact, the suit was right for trial in the year 2015 itself. However, the plaintiff did not show any active participation in conducting the suit. In spite of so many opportunities, the plaintiff was repeatedly seeking adjournments. On 01.09.2024, when the suit was posted for trial, the plaintiff did not come forward to conduct the suit but sought adjournment to produce the documents. Therefore, the Trial Court was of the considered opinion that in spite of many adjournments, the plaintiff's attitude was to drag on the proceedings. Taking note of the fact, the suit was finally dismissed for default. Against which I.A.No.1 of 2021 was filed to restore the suit and rehear the same. The said I.A., was dismissed against which CMA was filed and the same was dismissed. Aggrieved over the same, the present civil revision petition is filed.



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5. The Court had dismissed the I.A.No.21 of 2021 on the ground that the plaintiff had stated vague reasons. Further had filed any documents to prove the illness. This Court is of the considered opinion that the plaintiff ought to be granted one more opportunity to contest the suit, of course with strict direction. Therefore, the orders passed in C.M.A.No.4 of 2023 and the orders passed I.A.No. 1 of 2021 are liable to be set aside and accordingly set aside.

6. The suit in O.S.No.448 of 2019 is restored to the file of the District Munsif Court, Tirchirappalli. The plaintiff cannot take further adjournment and the suit shall be completed within a period of four months from the date of receipt of a copy of this order. If any further adjournment is sought, the same shall be dealt with seriously.

7. With the above said conditions, the civil revision petition is allowed. No costs.

30.10.2024

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

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To

- 1.The 4th Additional Subordinate Judge,
Trichy.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The District Munsif Court, Tirchirappalli.



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S.SRIMATHY, J.

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