



C.R.P.(MD)No.2223 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2223 of 2024

and

C.M.P.(MD)No.12575 of 2024

A.Abufarish

... Petitioner / Plaintiff / Plaintiff

Vs.

A.Najimunnissa

... Respondent / Defendant / Defendant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 26.04.2024 made memo (Order 12 Rule 8 of CPC) in O.S.No.472 of 2023 on the file of the IV Additional Subordinate Judge, Trichy.

For Petitioner : Mr.Raguvaran Gopalan

For Respondent : Mr.S.Deenadhayalan

* * *

ORDER

Heard both sides.



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2.The revision petitioner filed O.S.No.472 of 2023 on the file of Sub Court, Tiruchirappalli for specific performance of the sale agreement dated 18.08.2022. The defendant filed written statement alleging that no agreement to sell was entered into on 18.08.2022. The defendant would claim that the plaintiff entered into a void agreement with the defendant on 23.10.2018 and that in any event, it had become time barred. According to the defendant, the plaintiff managed to fabricate the suit agreement by misusing the earlier agreement papers.

3.The defendant filed memo under Order XII Rule 8 of Civil Procedure Code calling upon the plaintiff to produce the sale agreement dated 23.10.2018. The plaintiff filed his objection pointing out that he never admitted having entered into any agreement with the defendant on 23.10.2018. By the impugned order dated 26.04.2024, the Court below closed the memo with certain observations. Questioning the same, this civil revision petition has been filed.

4.Paragraph Nos.6 and 7 of the impugned order read as follows:-

“6.On considering the averments in the memo and objections, this Court is of view that plaintiff side contended that there is no relief sought



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in respect of said sale agreement. Respondent side contended that said document is vital to decide the suit, adverse inference can be drawn against person who had not submitted the document. At the same time plaintiff had not denied the existence of sale agreement dated 23.10.2018.

7.Defendant side contended that copy of alleged sale agreement is valuable with the defendant and original document is in custody of plaintiff, if the document is vital one and the same has not been produced the document. Adverse inference can be drawn against parties. The parties are directed to canvass their arguments in this aspect during the trial. Hence, this memo is closed with the said observations.”

5.I am clearly of the view that the Court below has not drawn any adverse inference against the plaintiff. It is well settled that adverse inference can be drawn only if a document is being withheld. In this case, the plaintiff had never admitted having entered into an agreement with the defendant on 23.10.2018. Therefore, the plaintiff could not have been called upon to produce an agreement which he denies. Therefore, the question of drawing adverse inference does not arise at all. It would have been better if the learned trial Judge had categorically stated whether he is allowing the memo or disallowing the memo. Since the memo has been closed with certain observations, the plaintiff was constrained to file this civil revision petition.



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6. In view of the reasons mentioned above, I reject the memo filed by the respondent / defendant. The civil revision petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

04.10.2024

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

The IV Additional Sub Court,
Tiruchirappalli.



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G.R.SWAMINATHAN, J.

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