



C.R.P.(MD)No.2250 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2250 of 2024

and

C.M.P.(MD)No.12734 of 2024

S.Mariaraj

... Petitioner / Petitioner / Defendant

Vs.

V.Shanthi

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 12-06-2024 in I.A.No.82 of 2024 in O.S.No.129 of 2019 on the file of the Additional District Judge, (Fast Track Court), Palani, Dindigul District.

For Petitioner : Mr.K.Vijay Sathya,
For Mr.C.Ezhilarasu.

* * *

ORDER

Heard the learned counsel for the revision petitioner.



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2.The defendant in O.S.No.129 of 2019 on the file of the Additional District Court (Fast Track Court), Palani is the revision petitioner herein. The suit was filed by the respondent herein for enforcing the mortgage created by the petitioner herein. In the said suit, the plaintiff did not enter the witness box. It is only her husband / Varatharajan who had examined himself as P.W.1. The case is now posted for defendant's evidence. At this stage, the defendant filed I.A.No.82 of 2024 under Order XVIII Rule 16 of Civil Procedure Code for issuing summons to the plaintiff for being examined as a witness on the side of the defendant. The Court below vide order dated 12.06.2024 dismissed the said I.A. with costs. Questioning the same, the present civil revision petition came to be filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision. He relied on the decision reported in **2001 (3) CTC 20 (V.K.Periasamy @ Perianna Gounder vs D.Rajan)** and the decision of the Hon'ble Supreme Court reported in **2023 INSC 1075 (Mohammed Abdul Wahid Vs. Nilofer)** in support of his contention that it is open to the defendant to summon the plaintiff to be examined on his side.



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4.I am not swayed by the said submissions of the learned counsel for the revision petitioner. In this case, the revision petitioner is figuring as the sole defendant. It is not a case of there being multiple defendants and some of them being non-contesting defendants. The contest is only between the petitioner and the respondent and there is no other third party. The Court below has noted that there is a direct conflict of interest between the two and therefore, the petitioner herein cannot be permitted to summon the respondent as his witness. In the cases law relied on by the learned counsel for the revision petitioner, the factual position that obtained was different. Only if the party sought to be examined as a witness is on the same page or there is no conflict of interest between the two, the opposite party can be summoned as a witness. That is not so in this case.

5.In this view of the matter, the impugned order refusing permission to summon the plaintiff as his witness is sustained. However, the considering the over all facts and circumstances of the case, the cost of Rs.1,000/- imposed on the petitioner is set aside. The Court below has observed that where a party is deliberately avoiding the witness box, adverse inference can be drawn. It is open to the revision petitioner herein to canvass all his contentions at the time of arguments.



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6.The civil revision petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.09.2024

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

The Additional District Judge,
(Fast Track Court),
Palani, Dindigul District.



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G.R.SWAMINATHAN, J.

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