



C.R.P. (MD) No. 2347 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 2347 of 2022

and

C.M.P. (MD) No.11347 of 2022

Poomalai

... Petitioner/

Defendant

-VS-

Vasudevan

... Respondent/

Plaintiff

PRAYER: Civil Revision Petition filed under Section 227 of the Constitution of India, to call for the records and set aside the fair order dated 29.09.2022 passed in I.A.No.1 of 2022 in O.S.No.96 of 2017 on the file of the learned Additional Subordinate Judge, Thanjavur and allow this Civil Revision Petition.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.J.Senthil Kumaraiah



C.R.P. (MD) No. 2347 of 2022

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ORDER

This Civil Revision Petition arises out of the dismissal of the application in I.A.No.1 of 2022 in O.S.No.96 of 2017. On a perusal of the records, it can be seen that the the suit is filed for specific performance. The case of the plaintiff is that the plaintiff had paid the part consideration of Rs.5,00,000/- (Rupees Five Lakhs only) and without receiving the balance consideration of Rs.3,00,000/- (Rupees Three Lakhs only) on executing the sale-deed, the defendant has gone back and hence, the suit.

2. The defendant is defending the same on the ground that the defendant's son had only executed the agreement by way of security, because some of the persons whom the defendant's son had introduced to the plaintiff after obtaining the loan did not repay the loan and therefore, the agreement is only by way of security and therefore, need not be specifically enforced is the case of the defendant.

3. The plaintiff's side evidence is completed. On behalf of the defendant's side, three witnesses have already been examined and cross-examination was



C.R.P. (MD) No. 2347 of 2022

also over. The matter was posted for further evidence of the defendant on 01.06.2022. On the said date, no evidence was let in by the defendant and therefore, the defendant side evidence was closed. Thereafter, on 21.09.2022, the present application was filed for recalling the evidence once again. The Trial Court after considering the fact that the matter was pending for so long and the matter was posted for arguments, rejected the petition upon opposition by the plaintiff.

4. The plaintiff's objection is that the application is sans any merit and he filed the application only for dragging on the proceedings further.

5. The learned Counsel for the petitioner would submit that the defendant want to further examine the Document Writer and Typist, who typed out the said sale agreement. When they witnessed to the various transactions and conversations, their evidence may be material to prove the defendant's version.

6. The learned Counsel for the respondent by opposing the same would submit that in any event, the Document Writer and the Typist evidence would not be relevant and it is only for the purpose of dragging on the matter.



C.R.P. (MD) No. 2347 of 2022

WEB COPY

7. The relevancy or otherwise of the witnesses and what they are going to speak need not be considered at this stage itself. When the evidence was closed on 01.06.2022 and the petition is filed on 21.06.2022, even though there is some slackness on the part of the defendant, this Court feels that one more opportunity can be granted to the defendant, especially considering the fact that even in the absence of any interim order, the suit is pending at the same stage from the year 2022 till this year. However, the plaintiff can be compensated by way of ordering costs and also the trial can be expedited. In that view of the matter, this Civil Revision Petition is allowed on the following terms:-

- (i) The order of the learned Additional Subordinate Judge, Thanjavur, in I.A.No.1 of 2022 in O.S.No.96 of 2017, dated 29.09.2022 is set aside;
- (ii) The suit is reopened for letting in further evidence of the defendant;
- (iii) On the next hearing date (03.08.2024), the defendant shall be ready with his witnesses along with proof affidavits if any and if the plaintiff intends, he can cross-examine on the same date also. In any event, the further trial shall be completed within a period of 30 days from 03.08.2024 and the



C.R.P. (MD) No. 2347 of 2022

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suit be disposed of on or before 30.09.2024. The petitioner shall also pay the costs of Rs.1,000/- (Rupees One Thousand only) to the respondent/plaintiff and file the memo before the Trial Court. If such memo is not filed on 03.08.2024, this Civil Revision Petition shall stand dismissed and the Trial Court shall proceed further and if the costs memo is filed, the defendant shall be ready with the witnesses and the further trial can be proceeded and completed as per the above directions.

Consequently, the connected Miscellaneous Petition is closed.

01.07.2024

Index : Yes

NCC : No

PKN

To

The Section Officer,

Vernacular Records,

Madurai Bench of Madras High Court,

Madurai.



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C.R.P. (MD) No. 2347 of 2022



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C.R.P. (MD) No. 2347 of 2022

D.BHARATHA CHAKRAVARTHY, J.

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C.R.P. (MD) No. 2347 of 2022

01.07.2024