



C.R.P.(MD)No.2515 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2024

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

C.R.P.(MD)No.2515 of 2022 & 957 of 2023

and

C.M.P(MD)No.12355 of 2022 & 4365 of 2023

Selvaraj

... Petitioner in both the
CRPs.

VS

Nagarathinam

... Respondent in both the
CRPs.

PRAYER in C.R.P.(MD)No.2515 of 2022 : Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to allow this Civil Revision Petition by setting aside the order passed in E.P. No.359 of 2018 in O.S No.168 of 2004 on the file of the Principal Sub Court, Dindigul, dated 22.08.2022.

PRAYER in C.R.P.(MD)No. 957 of 2023: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.75 of 2021 in I.A.No.128 of 2019 in A.S.No.18 of 2014 on the



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file of the Principal District Court, Dindigul dated 03.03.2023 and allow this Civil Revision Petition.

In both the CRPs:

For Petitioner : M/s.T.Selvan

For Respondent : Mr.S.Sarvangan Prabhu

COMMON ORDER

The issue involved in both Civil Revision Petitions are arising out of the suit filed in O.S.No.75 of 2021 and hence the following common order is passed.

2.(i) The **C.R.P.(MD)No.2515 of 2022** is filed by the defendant in the suit to set aside the Fair and Decretal order passed in E.P. No.359 of 2018 in O.S No.168 of 2004 on the file of the Principal Sub Court, Dindigul, dated 22.08.2022.



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2(ii) **C.R.P.(MD)No.957 of 2023** is filed by the defendant in the suit to set aside the Fair and Decreetal order passed in I.A.No.75 of 2021 in I.A.No. 128 of 2019 in A.S.No.18 of 2014 on the file of the Principal District Court, Dindigul dated 03.03.2023.

3. In both the Civil Revision Petitions, the plaintiff in the suit is the respondent herein and the defendant in the suit is the revision petitioner herein. For the sake of convenience, the parties are referred to as plaintiff and defendant as per the ranking in the suit.

4. The plaintiff had filed a suit in O.S No.168 of 2004 for specific performance and the same was decreed in favour of the plaintiff. Aggrieved over the same, the defendant has preferred an appeal in A.S.No.18 of 2014. The Appellate Court has taken the case on file and ordered notice to the plaintiff/respondent. But the defendant had failed to pay batta. Hence, the Appellate Court has dismissed the appeal for default. Thereafter, the defendant had filed a



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restoration petition along with an application to condone the delay 324 days in filing the restoration petition and the same was dismissed. Aggrieved over the same, the defendant had preferred C.R.P.(MD)No.957 of 2023.

5. In the meanwhile, the plaintiff had filed execution petition in E.P.No.32 of 2016 for execution of sale deed and the same was allowed, thereafter the sale deed was executed on 25.04.2018. The defendant had remained exparte in the said E.P.No.32 of 2016.

6. Thereafter the plaintiff had filed execution petition in E.P.No.359 of 2018 under Order 21 Rule 35(1) of Civil Procedure Code praying delivery and handover the suit property. In this execution petition the defendant had appeared and submitted before the Court that he had preferred an appeal in A.S.No.18 of 2004 and the appeal was dismissed for default on 03.11.2015, then he had preferred a petition to restore the appeal in I.A.No.139 of 2017 and the same is pending. The Execution Court had held that sale deed was executed, the appeal



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was dismissed, there is valid decree, hence the Court is inclined to order delivery and had ordered for delivery of property. Aggrieved over the same, the defendant had preferred Civil Revision Petition in C.R.P(MD)No. 2515 of 2020 against the order passed in E.P.No.359 of 2018 in O.S.No.168 of 2004. However, there is no stay order in C.R.P(MD)No. 2515 of 2020. Therefore, the Execution Court proceed with the EP proceedings.

7. The contention of the defendant is that the alleged sale agreement and the transaction is not specific performance, but it is loan transaction. The alleged agreement was executed for security purpose for loan transaction. Hence the defendant prayed to grant one more opportunity to contest the suit.

8. On perusing the memorandum of grounds filed in the appeal suit, the defendant had raised the ground that the alleged sale agreement was executed for collateral purpose and the alleged sale agreement is sham and nominal. Further raised that the plaintiff had not taken any steps within stipulated time from the



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date of agreement to complete the contract and the Court failed to consider oral and documentary evidence.

9. On perusal of the judgment passed in O.S No.168 of 2004 it is seen that the Trial Court had taken the defence of the defendant and had discussed the case and has held that the defendant had not proved the case of loan transaction. Consequently, the plaintiff case ought to be taken as proved. This Court is of the considered opinion that the defendant need not prove the plaintiff's case. The plaintiff ought to prove his case first and the plaintiff ought to stand on his own legs and the plaintiff ought to raise or fall on his own plea. By taking the plea of the defendant that it is loan transaction, the Court had wrongly held the burden of proof on the defendant.

10. Further the Trial Court had held that the registered sale agreement marked as Ex.A1 was executed and signed by the defendant and the defendant had admitted his signature. And also admitted that the defendant's wife had affixed



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her signature as witness. Hence the Trial Court has come to the conclusion that when the defendant had admitted the signature, then the sale agreement was executed and the same is genuine. Furthermore, the Trial has held that the plaintiff had issued the suit notice marked as Ex.A2 to show that he is ready and willing to complete the contract. But the defendant had failed to reply to the suit notice and hence the plaintiff had proved his case of readiness and willingness. This Court is of the considered opinion the Trial Court had blatantly erred in its reasoning. Simply because the execution of sale agreement, affixing signature and issuance of suit notice would not prove the case of the plaintiff. To prove the case to grant specific performance further evidence is necessary.

11. Especially in the case of specific performance, the entire burden is on the plaintiff to prove that the genuineness of the sale agreement. In the present case when the defendant had taken the plea of loan transaction, then heavy burden is on the plaintiff to prove the transaction is sale agreement and not loan transaction. Absolutely there is no such discussion in the judgment rendered by



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the Trial Court, rather shifted the burden on the defendant to prove the transaction is for loan, which is against law. Simply because the defendant had admitted the execution of sale agreement is not sufficient to prove the transaction is that of “sale agreement”. Further the plaintiff ought to prove independently that the transaction is only sale agreement and not loan transaction.

12. In the case of specific performance apart from proving the genuineness of sale agreement, the plaintiff ought to prove that he was ready and willing and the plaintiff has means to pay the balance. Moreover, if the sale agreement stipulates longer time for payment of balance amount, then a suspicion arises the transaction is for loan. In the present case the sale agreement is on 30.04.2003 for sale consideration of Rs.1,50,000/-, the plaintiff had paid the advance of Rs.60,000/-, the balance of Rs.90,000/- is payable by 11 months. The period would indicate longer period, hence there is suspicion, then the plaintiff ought to prove the transaction is only sale agreement and not loan transaction.



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13. Furthermore, if the other aspects of the judgment are considered and discussed in this order, then the plaintiff would be prejudiced. Therefore, this Court is inclined to interfere with the impugned orders passed by the Court below.

14. Accordingly the impugned orders are hereby set aside. The delay petition is allowed. Since the plaintiff/ respondent is represented by Counsel before this Court, the same is taken as notice served. The appeal suit in A.S.No.18 of 2014 is restored on the file of the Appellate Court and the Court shall hear it on merits and uninfluenced by any observations made by this Court in this order. The parties are directed to appear before the concerned Appellate Court on 04.02.2025. As far as the EP is concerned, the said proceeding is kept in abeyance until the disposal of the Appeal Suit. After the disposal of the appeal suit, the fate of the EP proceedings may be decided.



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15. With these observations, CRP(MD)No.957 of 2023 is allowed and C.R.P(MD)No.2515 of 2022 is disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

29.10.2024

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

- 1.The Principal District Court, Dindigul.
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Common order in
C.R.P.(MD)No.2515 of 2022 &
957 of 2023**

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