



C.R.P.(PD)(MD)No.752 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2025

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.752 of 2022

and

C.M.P(MD)No.3030 of 2022

Rajesh Kannan

...Petitioner/Petitioner/2nd Defendant

Vs.

Ravichandiran

...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the Fair and Decreetal order, dated 17.02.2022 made in I.A.No.17 of 2022, in O.S.No.53 of 2011 on the file of the learned Additional Sub Judge, Pudukkottai.

For Petitioner : Mr.S.I.Muthiah

For Respondent : Mr.K.G.Arunkumar

* * * * *

ORDER

The second defendant in O.S.No.53 of 2011, on the file of the Additional Sub Court, Pudukkottai, is the revision petitioner herein.



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2.The respondent herein as plaintiff had filed the above said suit for the relief of specific performance on the basis of the sale agreement, dated 07.05.2009. The suit was filed on 21.02.2011.

3.The original owner(D1) had sold the suit schedule property to the second defendant on 29.03.2010 itself. Pending suit, the first defendant had filed his written statement. However, the second defendant has not filed his written statement and he was set ex-parte on 31.08.2012. The second defendant has filed an application in I.A.No.17 of 2022 under Order 9 Rule 7 of C.P.C. to set aside the ex-parte order. This application has been dismissed by the trial Court on the ground that it has been filed belatedly and no proper reason has been assigned. Challenging the same, the present revision petition has been filed.

4.According to the learned Counsel appearing for the revision petitioner, due to ill-health on the part of the second defendant, he could not file the application to set aside the ex-parte order. Therefore, he prayed for setting aside the order passed by the trial Court in I.A.No.17 of 2022 and permit him to file a written statement to defend the suit.



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5.Per contra, the learned Counsel appearing for the respondent herein had contended that the application had been filed belatedly, if allowed, would result in re-trial and therefore, he prayed for dismissal of the revision petition.

6.I have considered the submissions made on either side and perused the materials available on record.

7.A perusal of the written statement filed by the first defendant reveals that the first defendant had sold the property in favour of the second defendant on 29.03.2010. Therefore, the rights of the second defendant have already been protected by the written statement filed by the first defendant. In such circumstances, setting aside the ex-parte order in favour of the second defendant for the purpose of enabling him to file a written statement, would cause great prejudice to the plaintiff. However, there cannot be any legal impediment for the second defendant to appear as witness.

8.The second defendant had filed I.A.No.16 of 2022 for the purpose of cross examining P.W.1 and P.W.2, but the same was dismissed by the trial Court. The second defendant had filed C.R.P.(MD)No.781 of 2022 and the



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same was allowed, permitting the second defendant to cross examine P.W.1 and P.W.2. Now the suit is posted for letting in evidence on the side of the defendants. In such circumstances, the second defendant can very well cross examine P.W.1 and P.W.2 and he can also enter into the witness box on behalf of the first defendant. In such circumstances, it is not necessary to allow the application filed under Order 9 Rule 7 of C.P.C.

9. With the above said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

13.02.2025

Internet: Yes/No
Index: Yes/No
RJR

To

The learned Additional Sub Judge, Pudukkottai.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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R.VIJAYAKUMAR, J.

RJR

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