

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1328 of 2012

and

M.P.No.1 of 2012

Rajendran

... Petitioner

vs.

Malika

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order of the District Munsif Court, Tiruvarur dated 11.01.2012 made in I.A.No.612 of 2011 in O.S.No.13 of 2010.

For Petitioner : Mr.V.Bharathidasan

For Respondent : Mr.B.Ramamoorthy

ORDER

Heard Mr.V.Bharathidasan, learned counsel for the petitioner and Mr.B.Ramamoorthy, learned counsel for the respondent. The impugned order of the trial court and other documents produced in the form of typed set of papers are also perused.

2. This revision has been filed challenging the order of the learned District Munsif, Tiruvarur dated 11.01.2012 made in I.A.No.612/2011 in O.S.No.13/2010. The said suit was filed by the respondent herein against the revision petitioner for specific performance based on an Agreement for Sale dated 30.03.2002, allegedly executed by the revision petitioner in favour of the respondent herein/plaintiff.

3. The suit is hotly contested by the revision petitioner herein/defendant contending that the suit sale agreement is a forged one. The petitioner/defendant filed an earlier application in I.A.No.277/2011 before the trial court for referring the suit sale agreement dated 30.03.2012 for the opinion of a handwriting expert. The said petition came to be dismissed by an order dated 15.07.2011 holding that the prayer made in the said petition could not be granted, since the petitioner had not come forward to produce the documents containing the admitted or proved signatures of the petitioner, which could be used for making a comparison with the signature found in the disputed document.

4. As against the said order, the petitioner preferred a civil revision petition in C.R.P.(PD) No.3231 of 2011 before this court

and the said civil revision petition was disposed of by order dated 26.08.2011 dismissing the said civil revision petition as withdrawn and at the same time granting liberty to the petitioner to file a fresh application incorporating the documents to be compared with the disputed documents. Thereafter, by virtue of the liberty granted by this court, the petitioner filed I.A.No.612/2011 for the very same relief, but this time enclosing the documents containing the admitted signatures of the petitioner that would be compared with the signature found in the disputed document.

5. It transpires, meanwhile the petitioner consented for making a reference of the dispute to the Lok Adalat for settlement. But the settlement was elusive even before the Lok Adalat. Citing the consent of the petitioner for referring the dispute to the Lok Adalat as an act amounting to admission of the signature found in the disputed document, the learned trial judge, chose to dismiss I.A.No.612/2011 by the impugned order dated 11.01.2012. Not content with such an unethical and erroneous observation, the learned trial judge has also gone further to observe that there was no *bona fide* on the part of the petitioner, since after the dismissal of the earlier I.A.No.277/2011, he filed a civil revision petition before the High Court, withdrew the same with liberty to file a

fresh petition, as another ground for rejection of his prayer. The learned trial judge has also made an observation without any basis that the petitioner had no intention to proceed with the trial of the suit and he wanted to simply block the proceedings by filing petition in one way or other. The reasons assigned by the learned trial judge for dismissal of the above said petition are found in paragraph 12 of the impugned order and for better appreciation, paragraph 12 is reproduced hereunder:

"12. Therefore from the above analysis of facts, this court concludes that there is lack of bonafide on the part of the petitioner in filing this petition for the following reasons;

1. When the petitioner denies in his signature is disputed sale agreement dated 30.03.2002, then what is the need for him to file memo for referring this case to lok adalath.

2. After this case was posted in list, only the petitioner has come up with this petition. Earlier when it was dismissed in I.A.277/11 by this court, he preferred CRP before Honourable High Court, Madras without contesting that obtained as order to withdraw CRP with liberty to file fresh petition. Now he has come up with the present petition.

3. Hence this court concludes that the petitioner has no intention to proceed with the trial

of the case & he wants simply to block the proceedings by filing of petition in one or other ways."

6. It is quite unfortunate that the learned trial judge has gone to the extent of observing that the consent of the petitioner for referring the matter to Lok Adalat for settlement would amount to admission of the execution of the disputed agreement for sale without even considering the fact that anything that transpired before the Lok Adalat or other ADR forum shall not be canvassed before the trial court in case of failure of such ADR method. All other reasons are also unsustainable and they can even be stated to be absurd, which cannot be sustained by this court. This court does have no hesitation in holding that the order passed by the learned trial judge on 11.01.2012 made in I.A.No.612 of 2011 in O.S.No.13/2010 is bound to be interfered with and set aside.

In the result, the civil revision petition is allowed. The order of the trial court dated 11.01.2012 made in I.A.No.612 of 2011 in O.S.No.13/2010 is set aside. I.A.No.612/2011 shall stand allowed. The trial judge shall send the disputed and admitted documents to the Regional Forensic Laboratory in a sealed cover through an Advocate-Commissioner appointed for the said purpose

for getting the opinion of handwriting expert after making a comparison of the signatures found in the admitted and disputed documents. However, there shall be no order as to cost. Consequently, the connected M.P.No.1 of 2012 is closed.

12.01.2015

Index : Yes
Internet : Yes
asr

To
The District Munsif, Tiruvarur

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.1328 of 2012

and

M.P.No.1 of 2012

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