



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27/1/2015

WEB COPY

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. PD(MD) No.1616 of 2013 and
MP(MD).1 of 2013

Velumayil @ Periya Velumayil ...Petitioner/Petitioner/
Plaintiff

Vs

1. Gomathiammal
2. Shanthi

3.Karunakaran ... Respondents/Respondents/
Defendants

Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order passed in I.A.No.1231 of 2013 in O.S.No.340 of 2009 dated 2/9/2013 on the file of the Principal District Munsif Court, Tenkasi.

For petitioner ... Mr.H.Arumugam
For respondents ... No appearance
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Orders reserved on 6/1/2015
Orders delivered on 27/1/2015

O R D E R

The revision petitioner is the plaintiff in the suit in O.S.No.340 of 2009 on the file of the Principal District Munsif, Tenkasi for a declaration that the agreement dated 24/3/2004 executed between the parties in respect of a common pathway in the second item of the suit property is binding on the parties and for permanent injunction and also for mandatory injunction to remove the encroachment put up on the common pathway. The defendant/respondent herein though denied the right and the agreement did not specifically deny the signatures.

<https://hcservices.ecourts.gov.in/hcservices/>

2. The petitioner contended that during the examination of D.W.1, he had specifically denied the thumb impression of the



first respondent. As the thumb impression in Ex.A.1 was denied, the petitioner had filed an application in I.A.No.1231 of 2013 for sending the thumb impression on Ex.A.1 dated 24/3/2004 along with the admitted thumb impressions to the fingerprint expert for comparison. The said application was heard by the trial Judge and the same was dismissed on the ground that the defendants had not disputed the signatures or the thumb impressions on Ex.A.1.

3. The learned counsel for the revision petitioner submitted that the reason assigned by the learned District Munsif is wrong as D.W.1 had specifically denied the signature of the thumb impression of the first respondent. Therefore, to establish the same, it is necessary to send the thumb impression and signature to the fingerprint expert to be compared with the admitted thumb impressions available on the vakalat, acknowledgement and also in the affidavit filed in I.A.No.1231 of 2013.

4. The petitioner seeks to compare the disputed document with that of the thumb impression contained in the vakalat and in the affidavit filed in I.A.No.1231 of 2013. The dismissal of the said application by the trial Court on the ground of delay cannot be sustained. Therefore, the trial Court is directed to appoint a Commissioner to send the documents to the forensic expert. The Advocate Commissioner being the Officer of Court can be asked to take original document by replacing a certified copy of the same. Though a comparison of signature in vakalat or written statement is normally deprecated, in the present case it is a thumb impression. Hence the same can be exempted as intentionally varying the same is not possible. However, it is made clear that the expert should be only from the Government Department and not a private expert.

5. With the above condition being strictly observed, this Revision Petition is allowed. The order of the District Munsif, Tenkasi is set aside and I.A.No.1231 of 2013 is ordered. No costs. Consequently, the connected M.P. is closed

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To
The Principal District Munsif Court, Tenkasi.
+One cc to Mr.H.Arumugam, Advocate, SR.No.3440
mvs
RL/3 c- 3/2/2015

Order in

C.R.P.PD (MD) No.1616 of 2013