

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.159 of 2014

Abdulla : Petitioner
versus

1.Razia Begum
2.Shafiullah
3.Amanullah
4.Zarina Taj : Respondents

PRAYER: Revision filed against the order dated 18.12.2013, in I.A.No.690 of 2013 in O.S.No.8 of 1996 on the file of the Subordinate Judge, Hosur.

For petitioner :: Mr.V.Lakshminarayanan

For respondents :: No appearance

ORDER

The petitioner filed a suit for specific performance. The suit was decreed. The decree was taken up in first appeal before the learned I Additional District Judge, Dharmapuri in A.S.No.12 of 1999. The decree was upheld by the First Appellate Court. However, on second appeal, the decree was set aside and the matter was remitted for fresh consideration.

2. Thereafter, the respondent filed an application for expert opinion in I.A.No.690 of 2013. The learned Trial Judge allowed the said application

and directed comparison of the sale agreement dated 5 July 1982 with reference to Ex.A.1 dated 22 June 1981, the signature found in the summon's vakalat, written statement and the affidavit filed previously in I.A.No.100/1982. The said order is now under challenge in this civil revision petition.

3. The learned counsel for the petitioner contended that the Trial Court was not correct in directing comparison of the signature found in the vakalat and the written statement and other pleadings which are self serving documents. According to the learned counsel, the petitioner has not admitted execution of the document dated 22 June 1981 and as such, the Trial Court was not correct in sending the said document for comparison.

4. None appears for the respondents in spite of printing their names in the cause list after service.

5. The Trial Court allowed the application in I.A.No.690 of 2013 and issued a direction to send the disputed document for comparison along with document dated 22 June 1981 and the signature found in the vakalat and the related pleadings, besides copy of the returned notice. There is no question of comparing the signature in the vakalat, pleadings and the notice returned after service. I am therefore of the view that the Trial Court

was not correct in sending those documents for comparison. However, there is yet another document before the Trial Court marked as Ex.A-1. The said document was executed on 22 June 1981, few months before the execution of the sale agreement dated 5 July 1982. In case there are no other contemporaneous documents, the said document could be sent for expert opinion.

6. In the result, the order dated 18 December 2013 is set aside in part. The learned Trial Judge is directed to call upon the respondents to produce any other contemporaneous documents, taking into account the sale agreement dated 5 July 1982. In case there are no contemporaneous documents, the sale agreement dated 5 July 1982 shall be sent for expert opinion by comparing it with Ex.A-1 dated 22 June 1981. The order passed by the learned Trial Judge is modified.

7. The civil revision petition is allowed as indicated above. No costs. Consequently, M.P.No.1 of 2014 is closed.

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Index:Yes/no
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To
The Subordinate Judge, Hosur

K.K.SASIDHARAN, J.

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