

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.4833 of 2014 and C.R.P.[PD] Nos.45, 46, 4526 of 2015
and M.P.No.1 of 2014 in C.R.P.[PD] No.4833 of 2014
and M.P.No.1 of 2015 in C.R.P.[PD] No.45 of 2015
and M.P.No.1 of 2015 in C.R.P.[PD] No.46 of 2015
and M.P.No.1 of 2015 in C.R.P.[PD] No.4526 of 2015

Kanthilal

... Petitioner
in all C.R.Ps

Vs

Pushpadevi

... Respondent
in all C.R.Ps

Kunal I. Tatter

... 2nd respondent
in CRP.4526/15

Prayer in C.R.P.[PD] No.4833 of 2014 : Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.07.2012 made in I.A.No.16148 of 2011 in O.S.No.13097 of 2010 on the file of the I Additional City Civil Court, Chennai.

Prayer in C.R.P.[PD] No.45 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 12.09.2014 made in I.A.No.4385 of 2014 in O.S.No.13097 of 2010 on the file of the I Additional City Civil Court, Chennai.

Prayer in C.R.P.[PD] No.46 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.07.2012 made in I.A.No.8674 of 2012 in O.S.No.13097 of 2010 on the file of the I Additional City Civil Court, Chennai.

Prayer in C.R.P.[PD] No.4526 of 2015 : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 13.10.2015 made in I.A.No.12817 of 2015 in O.S.No.13097 of 2010 on the file of the I Additional City Civil Court, Chennai.

For Petitioner : Mr.S.V.Jayaraman, Senior Counsel
in CRP.4833/14
& 45,46/15
For Respondent : Mr.S.Saranraj
in CRP.4833/14
& 45,46/15

For Petitioner : Mr.K.P.Gopalakrishnan
in CRP.4526/15
For 1st Respondent : Mr.S.Y.Masood
in CRP.4526/15

COMMON ORDER

C.R.P.[PD] No.4833 of 2014 and 46 of 2015 have been filed by the plaintiff in the original suit OS.No.13097 of 2010 against the common order dated 24.07.2012 passed in IA.Nos.16148 of 2011 and I.A.No.8674 of 2012 on the file of the I Additional Judge, City Civil Court, Chennai. C.R.P.[PD] No.45 of 2015 has been filed by the plaintiff in the above said suit against the order dated 12.09.2014 passed in I.A.No.4385 of 2014 on the file of the I Additional Judge, City Civil Court, Chennai. C.R.P.[PD] No.4526 of 2015 is also filed by the plaintiff against the order of the trial Court dated 13.10.2015 in I.A.No.12817 of 2015.

2. The suit came to be filed for specific enforcement of the contract under an agreement for sale dated 09.04.2007. The defendants have taken a plea that the agreement is not genuine and the signature of the 1st defendant found therein has

been forged. Under the said circumstances, the 1st defendant before filing of the suit executed a Gift Settlement Deed in favour of her son, who has been subsequently impleaded as 2nd defendant. The Gift Settlement Deed is dated 26.03.2010. I.A.No.16148 of 2011 was filed by the defendant to refer the disputed agreement alone to the Forensic Lab for opinion. Perhaps realising the futility of such a prayer, the defendants filed another application in I.A.No.8674 of 2012 for sending certain documents containing the signatures of the 1st defendant along with the disputed document to the Forensic Lab for comparison and opinion. Though the plaintiff has certain reservations regarding the genuineness or the comparability of the signatures sought to be send for being compared with the signatures found in the disputed document, the plaintiff during the course of arguments, chose to raise no objection for referring those documents to the Tamil Nadu State Forensic Lab at Chennai for comparison and opinion. Accordingly, both the applications came to be allowed by order dated 24.07.2012.

3. Before ever that order was given effect to by sending those documents to the Forensic Lab, the plaintiff filed an application in I.A.No.4385 of 2014 to send one more document to the Forensic Lab for being compared with the disputed document. The said document is none other than the registered Settlement Deed dated 26.03.2010 executed by the 1st defendant. While seeking such an order, since the document was not in his possession or control, the plaintiff, chose to seek a direction to the defendants to produce that document and to send that document also, after its production along with the disputed document and the documents which the

defendants want to rely on. The said application came up for enquiry on 12.09.2014. On the said date, without assigning any reason other than the observation that the prayer had become infructuous in view of the fact that the disputed document and the other documents were being entrusted to the Advocate Commissioner to be taken to the Forensic Lab for comparison and opinion, dismissed the said application in I.A.No.4385 of 2014. It is as against the said order, C.R.P.No.45 of 2015 has been filed.

4. The plaintiff, besides filing the said Civil Revision Petition, has also filed C.R.P.No.4526 of 2015 praying for an order referring the disputed documents and the documents sought to be relied on by the respective parties to a Central Forensic Lab either at Hyderabad or at Calcutta on the premise that the Handwriting Expert in the Tamil Nadu State Forensic Lab has already given an opinion and failed to compare some of the documents sent to the Forensic Lab. By making such a submission, the plaintiff wanted to show that there is a reasonable apprehension of the Handwriting Expert in the Tamil Nadu Forensic Lab at Chennai acting with a bias to confirm the earlier opinion. All the four Civil Revision Petitions are taken up together for disposal.

5. The submissions of Mr.S.V.Jayaraman, learned Senior Counsel for the petitioner, Mr.S.Saranraj, learned counsel for the respondents in C.R.P.Nos.4833 of 2014 and 45, 46 of 2015, Mr.K.P.Gopalakrishnan, learned counsel for the very same party who filed C.R.P.No.4526 of 2015 and also Mr.S.Y.Masood, learned counsel for the 1st respondent in C.R.P.No.4526 of 2015 are heard.

6. The impugned orders in all the Civil Revision Petitions and the copies of the other connected papers produced in the form of typed sets of papers are also perused. Upon such hearing and on such perusal, this Court is of the view that since the opinion of the Handwriting Expert had already been received, as reported by the learned counsel appearing for both the parties, C.R.P.Nos.45 and 46 of 2015 have to be dismissed as infructuous. So far as the C.R.P.No.4833 of 2014 is concerned, the grievance of the petitioner/plaintiff is that when he had chosen to say no objection in referring the disputed document along with the documents sought to be relied on by the defendants to the Forensic Lab for comparison, without either admitting or denying the comparability of the document, the learned trial Judge chose to negative the prayer made by the plaintiff for sending one more document, which was admittedly executed by the 1st defendant in favour of the 2nd defendant for the purpose of use by the Handwriting Expert for comparison.

7. It is also the contention of the learned Senior Counsel for the petitioner that though the execution of the Settlement Deed dated 26.03.2010 has been admitted by the 1st respondent/1st defendant in her counter statement, the learned trial Judge chose to dismiss the petition holding the petition to have become infructuous as steps had been taken to send the documents to the Forensic Lab as per the order dated 24.07.2012. The learned Senior Counsel also points out the fact that till the order in her application was passed, the disputed and other documents relied on by the defendants had not been despatched to the Forensic Lab for comparison and the same is obvious from the very impugned order passed by the trial Court.

As rightly contended by the learned Senior Counsel, the very impugned order itself shows that the documents were being despatched only on the date of passing of the impugned order.

8. When such is the case, the learned trial Judge could have very well stopped the despatch, collected the document sought to be relied on by the petitioner/plaintiff and sent the said document also along with other documents for the opinion of the Handwriting Expert in the State Forensic Lab at Chennai. On the other hand, the choice made by the learned trial Judge to dismiss the petition as infructuous strikes at the conscience of this Court and this Court will not in any way approve such an order to be correct. Suppose the learned trial Judge has assigned any other reason which is sustainable, this Court can non-suit the petitioner on the ground of laches, because the present Civil Revision Petition came to be filed after a lapse of number of months from the date of passing of the impugned order. Simply on the ground of laches, an injustice caused cannot be allowed to be perpetuated. The defendants cannot have any objection for referring the Settlement Deed executed by the 1st defendant in favour of the 2nd defendant to be used as a document containing admitted signatures for the purpose of comparing the signatures of the 1st defendant in the disputed document.

9. For the said reasons, this Court, comes to the conclusion that the order of the trial Court dated 24.07.2012 cannot stand the scrutiny of this Court and the same deserves to be interfered with and set aside. However, C.R.P.No.4526 of 2015

cannot be allowed, since by filing such a petition, the petitioner/plaintiff wants to cause aspersions on the Handwriting Expert working in the State Forensic Lab, Chennai. The attempt made by the petitioner can be equated with an attempt at forum shopping and hence, the said prayer has got to be disallowed.

10. Accordingly, C.R.P.Nos.4526 of 2015, C.R.P.Nos.45 and 46 of 2015 are dismissed. C.R.P.No.4833 of 2014 is allowed and the order of the learned trial Judge dated 24.07.2012 made in I.A.No.16148 of 2011 is set aside. The 2nd respondent/defendant shall produce the original Settlement Deed dated 26.03.2010 registered as document No.1416 of 2010 on the file of the SRO, Thirukazhukundram in the trial Court within two weeks from today and the trial Judge shall send the said document along with the disputed and all other documents which are relied on by the defendants as the documents containing admitted signatures to the Handwriting Expert for his opinion, irrespective of the fact that those documents were either considered by the Handwriting Expert or rejected as unsuitable for comparison to the State Forensic Lab, Chennai. After the receipt of the report from the Forensic Lab, the trial Court shall expedite the trial and complete the same not later than six months from the date of receipt of report from the Forensic Lab. No costs. Consequently, connected Miscellaneous Petitions are closed.

29.02.2016

Index: Yes
Internet: yes
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P.R.SHIVAKUMAR, J.

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To
The I Additional Judge,
City Civil Court, Chennai.

C.R.P.[PD] No.4833 of 2014 and
C.R.P.[PD] Nos.45, 46, 4526 of 2015

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