

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.4467 of 2015
and M.P.No.1 of 2015

Vidya .. Petitioner/Appellant/Defendant

Vs.

Arumugam .. Respondent/Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.02.2015 made in I.A.No.53 of 2014 in A.S.No.48 of 2013 on the file of the Principal Sub-Court, Mayiladuthurai.

For Petitioner : Mr.S.Sounthar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 25.02.2015 made in I.A.No.53 of 2014 in A.S.No.48 of 2013 on the file of the Principal Sub-Court, Mayiladuthurai.

2.The respondent herein as a plaintiff filed a suit in O.S.No.231 of 2011 for bare injunction on the basis of Ex.A6/sale agreement dated 30.03.1993 stating that the defendant/revision petitioner herein attempted to interfere with plaintiff's peaceful possession and enjoyment of the suit property. The defendant/revision petitioner has filed a detailed written statement disputing the sale agreement is forged one. After framing issues, the suit has been decreed, against which, the revision petitioner as an appellant preferred an appeal in A.S.No.48 of 2013, which was pending on the file of the Principal Sub-Court, Mayiladuthurai. During pendency of the appeal, the defendant/appellant has come forward with an application in I.A.No.53 of 2014 under Order 26 Rule 9 C.P.C. to send the document to the Forensic Science Department to obtain handwriting expert's opinion. The trial Court, after hearing both sides, dismissed the application, against which, the defendant/appellant has preferred this revision.

3.Learned counsel for the revision petitioner/defendant submits that Ex.A6/sale agreement does not contain the signature of Nagarathinam Ammal and it is forged one. Further, the said Nagarathinam Ammal was not examined before the Court. He

further submits that even though the said Nagarathinam Ammal was not examined before the Court, she has given a sworn statement before the Notary public. Hence the defendant sought for sending Ex.A6 sale agreement to the Forensic Science Department for comparison with the sworn statement of Nagarathinam Ammal before the Notary public. But the trial Court dismissed the application by holding that no contemporary document is available for comparison. Hence, he prayed for allowing the revision.

4.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length.

5.According to the learned counsel for the revision petitioner, even now no public document during that contemporary period is available.

6.It is well settled dictum of the Honourable Apex Court that the document contains admitted signature during the contemporary period is necessary to compare the disputed signature with that admitted signature. In the case on hand, no such document contains admitted signature of the said Nagarathinam Ammal during

the contemporary period is available to the defendant/revision petitioner. Under such circumstances, no purpose will be served, if the document is sent for comparison and it will not protect the dispose of appeal. The trial Court after considering all the aspects in proper perspective rightly dismissed the application. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision is dismissed as devoid of merits.

7. In fine, the Civil Revision Petition stands dismissed. Since the appeal is of the year 2013, the learned appellate Judge is directed to dispose of the same within a period of two months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

18.01.2016

Index: Yes/No

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R.MALA,J.

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To

The Principal Sub-Court, Mayiladuthurai.

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