

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2016

CORAM :

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(NPD)No.1787 of 2010

and

M.P.Nos.1 and 2 of 2010

M.G.Subramaniam

... Petitioner

.. Vs ..

V.Dinesh

... Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order passed in I.A.No.882 of 2009 in O.S.No.68 of 2007, dated 09.04.2010, on the file of the learned Sub-Court, Hosur and prays for setting aside the same.

For Petitioner : M/s.P.V.Rajeswari

For Respondent : Mr.V.Nicholas

ORDER

The petitioner has filed this Civil Revision Petition to set aside fair and decreetal order passed in I.A.No.882 of 2009 in O.S.No.68 of 2007, dated 09.04.2010, on the file of the Sub-Court, Hosur and

to allow the Civil Revision Petition.

2.The short facts of the case of the parties are necessary for the disposal of this Civil Revision Petition. The case of the revision petitioner is that he as a plaintiff filed a suit for permanent injunction and further sought for a relief of permanent injunction restraining the defendants from alienating the suit property to any person in O.S.No.68 of 2007. Originally the suit property belonged to the respondent herein and he executed a General Power of Attorney Deed on 05.06.2007 in favour of the 1st defendant in the suit, on the basis of which the 1st defendant executed a sale deed in favour of the Revision petitioner/plaintiff on 21.09.2007. But thereafter the defendants 2 and 3, those have no right over the suit properties, demanded more money from the Revision petitioner/plaintiff, since the revision petitioner refused to heed their demand, the defendants 2 and 3 attempted to trespass over the suit properties.

3.Pending suit, the respondent/2nd defendant took out an application in I.A.No.882 of 2009 under Order 26 Rule 10(A) C.P.C to appoint an advocate commissioner to take the signature /thumb

impression of the 2nd defendant to send the same for scientific examination to compare with his disputed signature found in Exhibit A2 General Power of Attorney Deed dated 05.06.2007 and to file report along with expert's opinion. The revision petitioner opposed the said application by filing a detailed counter affidavit to the same, wherein it is stated that the plaintiff's side evidence was closed and the suit was posted for the evidence of the 2nd defendant and at that stage the respondent herein filed the above application, only with an intention to drag on the further proceedings of the suit.

4.It is further contended in the counter affidavit of the revision petitioner that in the earlier proceedings in O.S.No.57 of 2007 and Crime No.383 of 2007 it has been clearly confirmed that the general power of attorney (Ex-A2) which is now sought for scientific examination to compare the signature of the respondent herein with expert's opinion was original and genuine. Therefore, from the above, it is clear that the above said general power of attorney was executed by the respondent herein/defendant No.2. Hence the present application is nothing but an abuse of process of law and to delay the disposal of the suit. Hence, the revision petitioner, who is the respondent has prayed the Court for dismissal of the petition.

5. After considering the case on either side and upon hearing the arguments, the Learned trial Judge was pleased to allow the above said application by order dated 09.04.2010. The present Civil Revision Petition is filed challenging the above said order.

6. I heard M/s.P.V.Rajeswari, learned counsel appearing for the petitioner and Mr.V.Nicholas, learned counsel appearing for the respondent and the relevant records are perused.

7. The learned counsel for the revision petitioner would submit that the present application is a vexatious one and it is totally an abuse of process of Law, since in the earlier suit in O.S.No.57 of 2007, the signature of the respondent herein found in the general power of attorney deed dated 05.06.2007 sought to be compared with the admitted signature of the respondent herein was held to be proved as genuine and original one. Therefore it was contended on the side of the revision petitioner that the Learned trial Judge without considering the earlier proceedings and also the legality in ordering comparison of disputed signature found in Ex-A2 with the present signature/thumb impression of the respondent herein/2nd defendant cannot be legally sustainable.

8.Per contra, the learned counsel for the respondent contended that the alleged general power of attorney of the 2nd defendant is a rank forged one and the same was created by the plaintiff and the 1st defendant by collusion and fraud. The respondent herein never signed or executed the alleged general power of attorney dated 05.06.2007. Hence, in order to avoid multiplicity of proceeding, he filed petition in I.A.No.882 of 2009 seeking scientific investigation of the signature/ thumb impression of the respondent herein found in the alleged power of attorney and the present admitted signature. The Learned trial Judge has rightly allowed the application and there is no illegality or infirmity in the order of the trial Court. Hence he prayed to dismiss this civil revision petition.

9.Now the points for consideration arise before this Court is whether the order of the trial Court is called for interference or not?

10.It is seen from the records that the revision petitioner entered into a sale agreement with the 1st defendant with respect of the suit scheduled property. The 1st defendant is the power agent of

the 2nd defendant, the respondent herein. Since the power agent failed to execute the sale deed in favour of the petitioner/plaintiff on the basis of the sale agreement, the petitioner herein filed a suit against the power agent namely R.Mohanakrishnan in O.S.No.57 of 2007 before the Principal District Judge, Dharmapuri at Krishnagiri for specific performance. The said suit came to be decreed on 17.08.2007. As per the judgment, the defendant in O.S.No.57 of 2007 executed sale deed in favour of the revision petitioner on 21.09.2007 and registered with the Sub-Registrar, Hosur as document No.8075 of 2007.

11.In the mean time the respondent herein lodged a police complaint before the Hudco Police Station at Hosur against his power agent R.Mohanakrishnan, the 1st defendant in O.S.No.68 of 2007, the petitioner/plaintiff and Sub-Registrars 1 and 2, Hosur, alleging that the property of the respondent herein was illegally sold by the 1st defendant by creating forged power of attorney deed. Though the police have registered a case at the first instance in Crime No.383 of 2007 for the offence under Sections 464, 465, 468, 417 r/w 34(a) and 120 of I.P.C, subsequently after investigation the Hudco police found that the above said complaint is false one and

the same is closed as mistake of fact by filing final report before the learned Judicial Magistrate No.2 at Hosur on 12.10.2007 and the same was accepted by the learned Judicial Magistrate No.2 and closed the F.I.R. as mistake of fact on 15.07.2009.

12.Further in the above suit in O.S.No.68 of 2007, on the side of the plaintiff PW-2 the staff of the District Registrar Office was examined, through whom so many documents were marked, out of which two important documents are that the General Power of Attorney deed dated 05.06.2007 registered vide document No.2068 of 2007 and the sale deed executed by the power agent, the 1st defendant in the suit in favour of the plaintiff on 21.09.2007 registered vide document No.8075 of 2007 which is a public document as per section 74 of the Evidence Act. The above said two documents are vital in nature and those documents are registered one and therefore the genuineness of the same cannot be doubted by the respondent herein, since the said documents were brought and marked through the competent person namely the District Registrar Office. Therefore, this Court is of the opinion that the apprehension of the respondent herein that the thumb impression found in the General Power of Attorney deed executed by him in favour of the 1st defendant on 05.06.2007 before the Sub-Registrar

Office at Hosur cannot be said to be forged one. So, in the considered opinion of this Court, there is no circumstance warranting scientific investigation of the above document for comparison of the signature found therein with the present signature of the respondent herein.

13. That apart on the side of the plaintiff PW-3 responsible person from Hudco Police Station was examined, through whom certain documents were marked. Further PW-3 has categorically deposed about the manner of investigation conducted on the complaint of the respondent herein and the closer report filed by them before the learned Judicial Magistrate No.2 at Hosur. From the above, it is made clear that the present application by the respondent herein seeking to send General Power of Attorney Deed dated 05.06.2007 (Exhibit A2) for comparison of the disputed signature of the respondent herein with his admitted signature to the expert by appointing an Advocate Commissioner is only to drag on the proceedings.

14. Further, it is settled law that the Court has got ample power as per Section 73 of Indian Evidence Act, the signature and thumb impression can be compared by the learned Judge in the

naked eye and if the Court found any variation in the signature of the respondent herein at Exhibit- A2 General Power of Attorney with his admitted signature, then the Court below could order to send the same to the handwriting expert for getting opinion.

15.The trial Court without considering the scope of the application and Section 73 of Indian Evidence Act, has erroneously allowed the application to send his disputed signatures of the respondent herein found in Ex-A2 along with his admitted signature to be (or) obtained in the Open Court for comparison of the same to the handwriting expert is not proper in the considered opinion of this Court. It is rightly pointed out by the learned counsel for the revision petitioner that the trial Court itself is empowered to compare the signature of the respondent herein as per Section 73 of Indian Evidence Act. In the present case, no such effort was taken by the Learned Judge before ordering comparison of signatures of the respondent herein to the expert opinion. Further the General Power of Attorney deed dated 05.06.2007 is sought to be compared with the admitted signature of the respondent herein of the year 2010. The present application was filed in the year 2009 and the same was allowed on 09.04.2010. The respondent has not produced any one of the document showing his admitted signature for

comparison with the above said Power of Attorney Deed for the contemporaries period. Hence on that ground also the application filed by the respondent herein is liable to be dismissed.

16. In view of the discussions made above, I do not find any merit in the application filed by the respondent herein and the same is liable to be dismissed.

17. In the result, this Civil Revision Petition is allowed by setting aside the order and decree passed in I.A.No.882 of 2009 in O.S.No.68 of 2007 dated 09.04.2010, on the file of the Sub-Court, Hosur. No costs. Consequently, connected miscellaneous petitions are closed.

02.09.2016

Note: Issue order copy on 12.09.2017.

Index: Yes

Internet: Yes

vs

To

The Sub-Court, Hosur.

M.V.MURALIDARAN, J.

VS



C.R.P.(NPD)No.1787 of 2010
and
M.P.Nos.1 and 2 of 2010

WEB COPY

02.09.2016