

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.11.2016

Delivered on: 18.11.2016

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

C.R.P.(PD)No.2262 of 2013 &
M.P.No.1 of 2013

K.Ramasamy

... Petitioner

vs

S.Poongodi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order passed in unnumbered I.A. of 2012 (C.F.R.No.5241 of 2012) in O.S.No.214 of 2009, dated 04.02.2013 passed by the learned I Additional Subordinate Judge, Erode.

For petitioners : Mrs.Ananthi Devi for
M/s.V.Elangovan

For respondents : No appearance

ORDER

The present revision petition has been filed against the order passed in unnumbered I.A. of 2012 (C.F.R.No.5241 of 2012) in O.S.No.214 of 2009, dated 04.02.2013 passed by the learned I Additional Subordinate Judge, Erode.

2. Heard the learned counsel appearing for the petitioner and perused the entire record. No representation on behalf of the respondent.

3. The petitioner is the plaintiff in the suit in O.S.No.214 of 2009 filed before the I Additional Subordinate Judge, Erode, seeking for permanent injunction against the respondent herein, who is the defendant in the suit, to restrain her from trespassing into any portion of the suit property and causing interference to his peaceful possession and enjoyment thereof and from forcibly dispossessing him therefrom.

4. Resisting the suit claim, on behalf of the defendant, a written statement was filed.

5. Pending the suit, the petitioner moved an interlocutory application under Order 26 Rule 10(2) r/w 151 CPC and 45 of the Evidence Act, praying for appointment of Advocate Commissioner, entrusting him with both the disputed and admitted documents and to send them to the Director, Department of Forensic Science Laboratory (Hand Writing Expert) to get Expert opinion and report. The said application was rejected vide order dated 4.3.2013.

6. According to the petitioner, the respondent/defendant had filed a forged and fabricated document designed as sale agreement dated 21.09.2007 (Ex.B1) and on the basis of the same, he was making attempt to grab the suit property which was purchased by the plaintiff under sale deed dated 3.6.2008. According to the petitioner, one of the executors of the original sale deed, dated 3.6.2008, namely, P.Vishwanathan was said to be one of the executors of the forged sale deed, dated 21.9.2007 (Ex.B1) also. Therefore, the petitioner contended that the signatures of said Vishwanathan were forged in some documents and for the said purpose, he sought for Advocate Commissioner for subjecting the documents by forensic examination.

7. It appears that even before the trial Court, there was no appearance on behalf of the respondent when the interlocutory application was taken up for hearing. However, the learned trial Court, after hearing the learned counsel for the petitioner therein and on perusing the documents, dismissed the application on the ground that the issue involved in the suit was only bare injunction and not for genuineness of the signatures in the sale agreement dated 21.09.2007. Moreover, the executant of the sale, namely Vishwanathan was not a party to the suit and the original sale

agreement had not been filed in that case. The trial Court has further reasoned that the suit for specific performance was pending for trial in other proceedings in O.S.No.250 of 2008, in which, the said sale agreement is under challenge and the similar petition has been filed and the same had been returned for compliance of defects. With these reasons, the trial Court dismissed the interlocutory application. As against the same, the present revision has been filed.

8. Learned counsel for the petitioner has reiterated the submissions and impressed upon the Court on the grounds raised in the revision petition.

9. Assailing the order of the learned trial Court, the learned counsel for the petitioner submitted that both suits, viz., O.S.No.214 of 2009 and 250 of 2008 were clubbed together since the subject property in both the suit was one and the same and that the Court below failed to take note of the fact that the disputed sale agreement was marked as exhibit in proceedings in O.S.No.214 of 2009 and therefore, there was no bar for him to file an interlocutory application, seeking appointment of Advocate Commissioner. In any event, though the petitioner has laid a suit for permanent injunction, the grant of relief will be linked to the outcome of the trial in both the

suits, namely, O.S.Nos.214 of 2009 and 250 of 2008 and the veracity of the sale agreement and the sale deed as between in favour of defendant and plaintiff respectively, would have to be gone into for purpose of granting reliefs. In such event, it was better, the correctness of the documents would have to be ascertained from the competent authority and report thereon would be of significant value for the trial Court to arrive at just decision. Therefore, the impugned order passed by the trial Court, is liable to be interfered with in order to secure the ends of justice as between the parties.

10. In the above circumstances, the order passed by the learned trial Court dated 27.09.2012 in unnumbered I.A. (C.F.R. No.5241 of 2012 in O.S.No.214 of 2009) is set aside.

11. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected MP is closed. Taking note of the fact that the suit is of the year 2009, the trial Court is directed to proceed with the trial after ordering appointment of Advocate Commissioner as prayed for in unnumbered I.A.(C.F.R. No.5241 of 2012 in O.S.No.214 of 2009) and complete the trial, within a period of six months from the date of receipt of a copy of this order.

Internet: yes/no
Index: Yes/no

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V.PARTHIBAN, J.

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Pre delivery Order in
CRP PD No.2262 of 2013

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