

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.446 of 2016

&

C.M.P.No.2300 of 2016

S.Manohar

... Petitioner

vs.

1.V.Duraisamy

2.V.Somu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside fair and final order dated 30.10.2015 made in I.A.No.354 of 2015 in O.S.No.130 of 2012 on the file of II Additional District and Sessions Court, Tiruppur and to allow the I.A.354 of 2015.

For Petitioner : Mr.G.Ethirajulu
for Mr.D.Selvaraju

ORDER

This Civil Revision Petition has been preferred against the order of the learned II Additional District Judge, Tiruppur dated 30.10.2015 made in I.A.No.354 of 2015 in O.S.No.130 of 2012 on the file of the said Court.

2. The petitioner herein is the plaintiff in the above said original suit and the respondents herein are the defendants in the said suit. The suit has been filed for the relief of specific performance based on an agreement for sale dated 02.02.2007, which was allegedly executed by the defendants 1 and 2 in favour of the plaintiff in respect of the suit property. The respondents herein/defendants are resisting the suit on the basis of a written statement filed by them contending that no such agreement was executed by them and their signatures found in the suit agreement are forged. In order to substantiate their case that the suit has been filed on a forged agreement for sale, the respondents herein/defendants filed an earlier application in I.A.No.247 of 2013 for referring the disputed document along with a document containing their admitted signatures to an expert at the Government Forensic Lab, Chennai for opinion. The document, which was sought to be used as containing the admitted signatures, was nothing but a deed of deposit of title deeds executed in favour of a bank while availing a loan.

3. The said petition was resisted by the petitioner herein/plaintiff not on the ground that the signatures found in the said alleged admitted document could have been deliberately disguised with the intention of using the same for comparison in support of their plea of defence in the suit that might be filed on the basis of the suit agreement for sale, but on other

grounds. The said application was allowed rejecting the objections raised by the petitioner herein/plaintiff. The order was also challenged in the previous Civil Revision Petition and the same was upheld by this Court.

4. Thereafter, the disputed and admitted documents were sent to the forensic lab, Chennai, where the handwriting expert examined the documents, compared the signatures and submitted an opinion to the effect that the person, who made the signatures in the disputed documents, were not the persons who made the signatures in the admitted document. Subsequent to the receipt of such a report, the petitioner herein/plaintiff, chose to file a petition in I.A.No.354 of 2015 for referring the very same documents to another forensic lab, namely Central Forensic Lab at Hyderabad for the opinion of an expert there.

5. The very fact that the petitioner has chosen to make such a contention will make it clear that the petitioner imputes bias or dishonesty on the part of the Handwriting expert at Government Forensic Lab, Chennai. Having failed in his attempt to prevent the disputed document being sent to a Handwriting expert for comparison with the signatures in an admitted document, the petitioner has once again made an attempt this time after the report of the handwriting expert was received in the Court below.

6. Mr.G.Ethirajulu, learned counsel arguing for the counsel on record for the petitioner wants to impress upon the Court that the document, which was used for comparison came into existence subsequent to the execution of the suit agreement for sale and hence, there is every possibility of the respondents disguising their signatures with the intention of using it for comparison with the disputed document. It is his further contention that normally documents anterior to the disputed document alone shall be taken into account for the purpose of comparison and the document posterior to the disputed document should not be used for comparison.

7. Such a proposition is a far fetched one and the same cannot be countenanced. If a person wants to cheat the other person, who enters into a contract with him, he can even disguise the signature in the very same document executed by him instead of going for a round about way of disguising his signature in another document and seeking comparison of the same with the disputed document. Such disguised signatures can be made even in respect of the documents anterior to the disputed document or posterior to the disputed document. But, when the document is referred to the handwriting expert, the flow with which the signatures have been made will also be an aspect that will be taken into consideration by the handwriting expert to find out whether there is unnatural pen stops or other characteristics showing disguise in putting the signature. The only

proposition which is laudable is that a document which has been brought into existence subsequent to the date on which the dispute has arisen should be approached with care and caution, as there is possibility of the party disguising his signature to be used for comparison.

8. Here is a case in which the admitted document was executed in the regular course of business of a bank and it was obtained by the Bank while advancing loan, which took place within a year from the date of execution of the disputed document. The dispute arose only in 2012, namely 4 years after the admitted document came to be executed by the respondents herein/defendants in the course of the banking business of the Bank, in which they availed loan. The narration of the above said facts will make it clear that the present attempt made by the petitioner/plaintiff is to stir the water and try to fish out of the same by referring the document to another expert for opinion. Perhaps, it may be the intention of the petitioner/plaintiff to go on seeking such reference to expert after expert till an opinion favourable to the petitioner is obtained.

9. Hence, the decision made by the trial Court to dismiss I.A.No.354 of 2015 filed by the petitioner cannot be said to be either erroneous or infirm warranting interference by this Court in exercise of its power of superintendence over the subordinate Courts under Article 227 of the Constitution of India. The revision petition does have no merit and it does

not even merit admission and on the other hand, it deserves to be dismissed at the threshold.

Accordingly, the revision petition is dismissed. No costs.

18.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

II Additional District and Sessions Court
Tiruppur

P.R.SHIVAKUMAR.J.,

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