

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.471 of 2016

and

C.M.P.No.2395 of 2016

1. L.Nirmala Devi

2. L.Youvapriya

3. Poorani

4. L.Saravanan

(Petitioners 1 to 3 represented
by their Power Agent L.Saravanan,
4th petitioner herein)

... Petitioners

Vs

A.Chandrasekan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 04.10.2015 passed in I.A.No.976 of 2015 in O.S.No.153 of 2014 on the file of the I Additional District Court, Tiruppur.

For Petitioners : Mr.K.Govi Ganesan

For Respondent : Mr.I.C.Vasudevan for
Mr.K.Sudhakar

ORDER

Heard both sides.

2. The revision petition has been filed under Article 227 of the Constitution of India against the order of the trial Court dated 04.10.2015 referring the document containing the disputed signatures to a Handwriting Expert at the Government Forensic Science Department, Chennai for comparison with the admitted signature and opinion. For that purpose, an Advocate Commissioner was appointed to take the concerned documents in a sealed covered to the Forensic Science Department, Chennai to handover the same there and for getting back the documents in a sealed cover after the purpose is accomplished in the Forensic Science Department, Chennai.

3. The plaintiffs in the suit are the petitioners in this revision. They filed the suit O.S.No.153 of 2014 on the file of the I Additional District Judge, Tiruppur for recovery of the advance amount paid under an agreement of sale and also the endorsements there on. The said agreement was admittedly executed in favour of the father of the revision petitioners. The respondent herein / defendant, having admitted the execution of the sale agreement and receipt of the

advance reflected in the sale agreement, denied having made the endorsements found on the back side of the agreement and also the receipt of the amounts evidenced by the endorsements. Under the said circumstances, the respondent herein / defendant filed an application I.A.No.976 of 2015 purporting to invite an order referring the document containing admitted signatures and disputed signatures to the Handwriting Expert, Forensic Science Department, Chennai. While drafting the petition, the prayer was not couched in proper language. The prayer made is to the effect that an Advocate Commissioner for the purpose of comparing the admitted specimen signature found in the sale agreement with the signatures found on the back side of the sale agreement dated 10.06.2008 with a help of an expert and to file a report. The Advocate Commissioner is not appointed for the purpose of making a comparison and submitting a report. The Advocate sought to be appointed is not a Handwriting Expert. Though such a defective prayer was made, the parties understood the purpose for which the petition was filed and they contested the petition.

4. The learned trial Judge also, on a clear understanding of the prayer, passed an order directing the document containing

disputed signatures to be sent to the Forensic Lab in a sealed cover through an Advocate Commissioner for the purpose of comparison by a Handwriting Expert. While doing so, the learned trial Judge chose to refer to one more document, which was not mentioned in the petition as a document containing the admitted signatures, to be used for comparison with the disputed signatures in the endorsements found on the back side of the sale agreement dated 10.06.2008.

5. The learned Counsel for the petitioner in the revision petition submits that though such a prayer has been made in the petition, the learned trial Judge has omitted to direct comparison of the admitted signature found in the sale agreement dated 10.06.2008 with the disputed signatures found in the endorsements on the back side of the said document and on the other hand, the learned trial Judge chose to direct comparison of the signatures in the disputed endorsements with a trust deed, which was not at all referred to in the petition.

6. Mr.I.C.Vasudevan, learned counsel appearing for the respondent on behalf Mr.K.Sudhakar, learned Counsel on record for the respondent, would fairly concede that there was no such prayer for

sending the trust deed dated 31.11.2012 along with the agreement containing the endorsements to the Forensic Lab for comparison and on the other hand, the prayer was to make a comparison of the admitted signature found in the agreement dated 10.06.2008 and the disputed signatures found in the endorsements on the back side of the said agreement. It is the further submission of the learned counsel for the respondent that the respondent has got no objection for modifying the order so as to make same in conformity with the prayer, though innocuously made in the petition, as the prayer was correctly understood by the parties.

7. The petitioners also do not have objections for seeking the opinion of the Handwriting Expert, who shall compare the admitted signatures found in the agreement dated 10.06.2008 and the disputed signatures found on the back side of the agreement.

8. Accordingly the Civil Revision Petition is allowed in part and the order of the trial Court dated 04.10.2015 made in I.A.No.976 of 2015 shall be modified as follows:-

“The sale agreement dated 10.06.2008 shall be sent in a sealed cover to the Director, Forensic Science Department, Kamarajar Salai,

Chennai-600 004 for examination by a Handwriting Expert, who shall compare the signatures found in the agreement dated 10.06.2008 and the signatures found in the endorsements on the back side of the said sale agreement and submit a report. For the purpose of ensuring safe transit of documents, Mr.Ganesh Kumar, Advocate is appointed as Advocate Commissioner who shall take the above said document in a sealed cover, hand it over to the Director, Forensic Science Department, Kamarajar Salai, Chennai - 600 004 and get back the document in a sealed cover from the Director, Forensic Science Department, Chennai, after comparison and handover the same to the lower Court."

9. In all other respects, the order of the trial Court shall stand confirmed without modification. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2016

Index: Yes/No
Internet: yes/No
srn

To
The I Additional District Court, Tiruppur.

P.R.SHIVAKUMAR, J
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