

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.564 OF 2016
AND CMP NO.2834 OF 2016

1.G.Srinivasan
2.T.Thenmozhi

... Petitioners

Versus

T.P.Gajendiran

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order of dismissal in I.A.No.46/2015 in O.S.No.32/2013 dated 19.06.2015 passed by the learned II Additional District and Sessions Judge, Vellore, Ranipet, Vellore District.

For Petitioners : Mr.A.Rajesh Kanna
For Respondent : No appearance

ORDER

The respondent filed a suit for specific performance on the basis of an unregistered sale agreement dated 07.06.2010 said to have been executed by the petitioners. The petitioners filed written statement

and contested the suit. Thereafter, and more particularly, after marking the sale agreement as Ex.A1, the petitioners filed an application in I.A.No.46 of 2015 to send the document for expert opinion. The application was dismissed by the learned Trial Judge with an observation that the Court would be in a position to compare the signatures and as such, there is no need to send the document for expert opinion. The order is now under challenge in this Civil Revision Petition.

2. Heard the learned counsel for the petitioners. None appears on behalf of the respondent.

3. The petitioners in their written statement filed in O.S.No.32 of 2013 disputed the execution of sale agreement. The respondent marked the sale agreement dated 07.06.2010 as Ex.A1. Immediately thereafter, the petitioners filed the application in I.A.No.46 of 2015.

4. The learned Trial Judge dismissed the application primarily on the ground that there was no reply sent to the petitioners to the document marked as Ex.A2. According to the learned Trial Judge, in case the petitioners have not executed the document, they would have

given reply to the notice. The other reason is that the Court itself can compare the signatures found in the document and there is no necessity to send the document for expert opinion. I am not in a position to accept the reasons given by the learned Trial Judge. Just because the petitioners allowed the respondent to mark Ex.A2, it cannot be said that they have accepted its contents. The other question is with respect to the comparison of the left thumb impression. In the usual course, it is for the respondent being the plaintiff to prove that the document was executed by the first petitioner herein. However, the petitioners themselves have taken up the issue with regard to comparison. The Trial Court in any case was not correct in dismissing the application on the basis of the reasons given in the impugned order. I am therefore of the view that the impugned order is liable to be set aside.

5. In the result, the order dated 19.06.2015 in I.A.No.46 of 2015 in O.S.No.32 of 2013 is set aside. The learned Trial Judge is directed to send the left thumb impression alone for comparison as indicated in the application in I.A.No.46 of 2015.

6. The Civil Revision Petition is allowed to the extent

indicated above. No costs. Consequently, connected civil miscellaneous petition is closed.

04.11.2016

TK

To

The II Additional District and Session Judge
Vellore at Ranipet,
Vellore District.

K.K.SASIDHARAN, J.

TK

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