

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.589 of 2016

and

C.M.P.No.3121 of 2016

1.Sridhar
2.Kishorkumar

... Petitioners

vs.

Arunkumar

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order in I.A.No.718 of 2015 in O.S.No.119 of 2015 dated 15.02.2016 passed by the learned Principal District Munsif, Gingee, Villupuram District.

For Petitioners : Mr.V.R.Appaswamee

For Respondent : Mr.R.Subramanian
for Mr.N.Naganathan

ORDER

The defendants 1 and 2 in O.S.No.119/2015 pending on the file of Principal District Munsif, Gingee, Villupuram District, are the petitioners in the present revision filed under Article 227 of the Constitution of India. The respondent herein is the sole plaintiff in the above suit. The suit has been filed for permanent injunction, based on an averment that the respondent is the owner of the suit property and petitioners 1 and 2 herein/defendants 1 and 2 are trying to interfere with his peaceful possession and enjoyment of the suit

property.

2. The revision petitioners herein, who entered appearance in the said suit, without even filing a written statement, chose to file I.A.No.719/2015 under Order XXVI Rule 10 CPC r/w Section 45 of the Indian Evidence Act, 1872 seeking appointment of an Advocate Commissioner to take the disputed document relied on by the respondent herein/plaintiff along with an admitted document, namely a partition deed dated 30.06.1986, to the Government Forensic Department so as to get the opinion of a finger print expert after comparing the left thumb impression of the father of the petitioners herein in both the documents. The petition was filed contending that the thumb impression had been forged and it had been affixed in such a way that more than one thumb impression overlap and that there was a deliberate attempt to disguise the thumb impressions.

3. The said petition was resisted by the respondent herein/plaintiff by filing a detailed counter contending that the document in question was executed by Thesu Reddiar, the father of the petitioners herein, in which, one of the petitioners herein, namely Sridhar, is an attesting witness; that the executor of the said sale deed dated 17.06.2005, died after the execution of the said document in favour of the father of the respondent herein, but before registration; that hence the father of the respondent herein had to seek compulsory registration of the same, which was rejected by the Sub Registrar, Ananthapuram driving the father of the respondent herein to approach the District Registrar for the said purpose; that on the summons issued by the District Registrar, 4 out of six legal heirs of the deceased Thesu Reddiar appeared before the District Registrar and the petitioners herein some how or other evaded direct service of the summons by the District Registrar for the

first time and on the second occasion they refused to receive the summons and that even then they were served with such summons by substituted service, namely affixture. It was also contended that out of the four legal representatives of the deceased Thesu Reddiar, three did not deny the execution of the document by Thesu Reddiar and on the other hand, admitted such execution and one Sumathy, who alone disputed the execution of the said document by her father, did not lead evidence; that on the other hand, the other attester of the document being the brother of Thesu Reddiar also deposed before the District Registrar admitting the execution of the document by Thesu Reddiar and his attesting the document; that after such an elaborate enquiry, the District Registrar passed an order directing compulsory registration of the document and that having suffered such an order and kept quiet for 10 years, the petitioners have chosen to give trouble when the respondent/plaintiff was making attempt to alienate the property.

4. The contention of the respondent is that the petition by the revision petitioners to have the disputed document and the alleged admitted document to be referred to the Forensic Department for comparison is nothing but an attempt at vexation to drag on the proceedings and thereby making the respondent to come to terms with them. The learned trial Judge, after hearing both sides, sustained the objections raised by the respondent herein and dismissed the application by order dated 15.02.2016, which is impugned in the present revision.

5. The matter stands listed today for admission. The respondent has already entered appearance by filing a counter. This court is the view that the civil revision petition can be disposed of at the stage of admission itself after

hearing both sides. Accordingly, the arguments advanced by Mr.V.R.Appaswamee, learned counsel for the petitioners and by Mr.R.Subramanian, learned counsel arguing on behalf of the counsel on record for the respondent are heard. The grounds of revision, copy of the impugned order and copies of the other documents produced by both parties in the form of typed sets of papers are also perused and taken into consideration. Upon such hearing and upon such perusal, this court is of the view that there is no merit in the revision and the same deserves to be dismissed and the reasons for the same are as follows:

6. The respondent claims title to the suit property by virtue of a sale deed dated 17.06.2005 executed by late Thesu Reddiar, who is none other than the father of the revision petitioners herein. Before the said document could be registered, Thesu Reddiar passed away and the purchaser under the document, namely the father of the respondent herein, approached the Registering Authorities for compulsory registration. When the Sub Registrar refused to register the document on the ground that the executor had died, the father of the respondent had to apply to the District Registrar and on enquiry, the District Registrar found the execution to be true and passed an order on 29.05.2006 for compulsory registration of the document. Accordingly, the sale deed dated 17.06.2005 has been registered as document No.456 of 2006 on the file of Sub Registrar, Ananthapuram, Villupuram District. As many as six persons were made as respondents in the proceedings before the District Registrar in their capacity as the legal representatives of the deceased Thesu Reddiar. The petitioners, who were very much parties to the said proceedings, did not challenge the order passed by the District Registrar for compulsory registration of the said document. In fact, three other legal representatives of

Thesu Reddiar admitted the document to have been executed by Thesu Reddiar, the one who denied the execution, did not lead evidence to show that the document was not executed by Thesu Reddiar. On the other hand, the brother of Thesu Reddiar, who was one of the attestors, appeared before the District Registrar and gave testimony to the effect that the document was executed by his brother Thesu Reddiar and he was one of the attestors of the document. The first petitioner herein was the other attestor of the document. The petitioners herein at the first instance, evaded service of summons issued by the District Registrar. When the second summons came to be issued, they refused to receive it. That itself would have been enough to set them ex-parte. However, the District Registrar, in order to give one more chance, effected service of the summons by affixture - substituted service. Even thereafter the petitioners did not appear before the District Registrar to deny the execution of the document by Thesu Reddiar or the attestation of the said document by first petitioner herein. They willingly suffered an ex-parte order directing compulsory registration of the document in question. Such an order passed in a proceeding in which the petitioners were also parties, will very much bind them. They have not chosen to challenge the order within the period stipulated in law relating to limitation for the cancellation of the registration or for getting the sale deed declared null and void. The petitioners also did not plead collusion between the father of the respondent and the petitioners' own brothers and sisters. Thus they have allowed a period of 10 years to lapse from the date of registration of the document.

7. Now in the suit filed by the respondent, the petitioners have chosen to file an interlocutory application, without filing a written statement disclosing their defence, seeking an order appointing an Advocate

Commissioner to take the above said sale deed along with one partition deed dated 30.06.1986 to the Forensic Lab for the purpose of comparison of thumb impression of the deceased Thesu Reddiar. The said attempt, as rightly contended by the learned counsel for the respondent, is only a vexatious attempt aimed at prolonging the case as long as possible and thereby driving the respondent to come to terms with them.

8. During the course of the arguments, the learned counsel for the petitioner submitted that the respondent filed an application in I.A.No.1039/2015 for returning the original sale deed and that the same will show that the respondent is afraid of the document being sent to the Forensic Lab for verifying whether the thumb impression found therein is that of Thesu Reddiar or not. As a reply to the said submission Mr.R.Subramanian, learned counsel appearing for the counsel on record for the respondent, submits that the respondent will not press his application for the return of the original sale deed though he wanted the original sale deed to effect alienation of the property even during the pendency of the suit. The said submission is recorded. The said submission is recorded.

9. The learned trial Judge, on proper appreciation of the facts and the pleadings of the parties in the interlocutory application, came to the conclusion that the relief sought for in I.A.No.719/2015 in O.S.No.119/2015 could not be granted and accordingly dismissed the said petition. This court does not find any defect or infirmity, much less exercise of jurisdiction not conferred on the trial court or failure to exercise jurisdiction conferred on the trial court or exceeding the jurisdiction conferred on the trial court or exercising such jurisdiction in such a way to result in miscarriage of justice, warranting interference by this court in exercise of its power of

superintendence under Article 227 of the Constitution of India.

In the result, the civil revision petition fails and the same is dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petition is closed.

26.02.2016

Index : Yes
Internet : Yes
asr

To

The Principal District Munsif, Gingee, Villupuram

P.R.SHIVAKUMAR, J.
asr/-

C.R.P (PD) No.589 of 2016
and
C.M.P.No.3121 of 2016

26.02.2016