

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 5.4.2016.

CORAM

THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Civil Revision Petition (PD) No.677 of 2016
and
C.M.P.No.3476 of 2016

Sellammal

Petitioner

vs.

1. A.Natarajan
2. C.Gurusamy

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 8.12.2015 made in I.A.No.718 of 2015 in O.S.No.6 of 2012 passed by the Sub Judge, Perundurai.

For petitioner : Mr.N.Manokaran

For R1 : No appearance.

For R2 : Mr.S.Kaithamalai Kumaran

ORDER

Arguments advanced on both sides are heard.

2. The plaintiff in O.S.No.6 of 2012, pending on the file of the Sub Court, Perundurai, is the petitioner in the revision. The respondents in the revision are the defendants therein. The suit has been filed for the relief of specific performance based on an agreement

for sale allegedly executed by the first respondent/first defendant on 13.8.2010 for the sale of the suit property to the revision petitioner/plaintiff. The second respondent has been made a party, as a person, having purchased the said property subsequent to the execution of the suit agreement for sale. The first respondent/first defendant remains ex parte. The second respondent herein/second defendant has filed a written statement alleging collusion between the plaintiff and the first defendant and at the same time, pleading that the suit agreement is a forged and fabricated document which will not bind the second defendant. In the light of the above stand taken by the second respondent herein/second defendant, the revision petitioner/plaintiff filed an application in I.A.No.718 of 2015 for referring the suit agreement for sale and the sale deed executed by the first respondent in favour of the second respondent (admitted document) to a handwriting expert for opinion. The said application was resisted by the second respondent herein. The learned Trial Judge, after hearing both sides, dismissed the said application holding that since the disputed document was neither admitted nor denied, there was no need to send the document for the opinion of the handwriting expert.

3. Mr.N.Manokaran, learned counsel for the petitioner, taking the court through the averments made in the written statement, points out the fact that a specific plea of forgery and fabrication regarding the suit agreement has been made by the second respondent herein/second defendant and that hence, the revision petitioner/plaintiff was constrained to file an application for referring the disputed document and admitted document to a handwriting expert for his opinion.

4. The learned Trial Judge, as rightly pointed out by the learned counsel for the petitioner, wrongly assumed that the document was not disputed by the second respondent herein/second defendant which prompted the court below to dismiss the said application assigning the reason found in the impugned order. This court has no hesitation in coming to the conclusion that the reason assigned is not only erroneous, but also perverse in the light of the specific plea made by the second respondent/second defendant that the suit agreement for sale is forged and fabricated. The application for referring the disputed document and the admitted document for comparison and opinion of a handwriting expert ought not to have been dismissed by the Trial Court and hence, the order of the Trial Court deserves to be interfered

with.

5. In the result, the civil revision petition succeeds. The order of the Trial Court made in in I.A.No.718 of 2015 in O.S.No.6 of 2012 on the file of the Sub Judge, Perundurai is set aside. The application in I.A.No.718 of 2015 shall stand allowed. The disputed document viz., the suit agreement for sale dated 13.8.2010 and the original sale deed dated 13.10.2010, executed by the first defendant in favour of the second defendant shall be sent to the Director, Forensic Sciences Department, 30-A Kamarajar Salai, Chennai 600 004, in a sealed cover through an Advocate Commissioner to be appointed by the Trial Court for comparison by a handwriting expert and his opinion. Orders regarding the remuneration and other details shall be passed by the Trial Court in the suit. No costs. The connected miscellaneous petition is closed.

5.4.2016.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

Sub Judge, Perundurai.

P.R.SHIVAKUMAR, J.

Ssk.

C.R.P.(PD) No.677 of 2016

5.4.2016.