

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2762 of 2012
and
M.P.No.1 of 2012**

V.Rangaraj

.. Petitioner

Vs.

1.K.R.Chidambaram

2.L.Palaniappan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 10.06.2011 passed in I.A.No.778 of 2010 in O.S.No.89 of 2009, on the file of the III Additional Subordinate Judge, Coimbatore, to set aside the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondents : No Appearance

ORDER

The 1st defendant is the revision petitioner before this court. The case of the revision petitioner is that the respondent herein as plaintiff filed a suit against the petitioner herein in O.S.No.89 of 2009 on the file of the III Additional Subordinate Judge of Coimbatore for specific performance, declaration, to declare the sale deed dated 29.02.2008 executed by the defendants 1 to 3 in favor of the 4th defendant is illegal and permanent injunction.

2.According to the plaintiffs, the 1st defendant and the plaintiff entered into a sale agreement dated 29.12.2007 and the petitioner herein agreed to execute the sale deed after receiving the balance sale consideration. Whereas the 1st defendant in his written statement denied the execution of sale agreement dated 29.12.2007. Therefore in order to establish the fact that the signature contained in Ex.A2 sale agreement dated 29.12.2007 is not the signature of the 1st defendant, and hence he took out an application in I.A.No.778 of 2010 to compare the disputed signature found in Ex.A2 sale agreement along with his admitted signature found in the Vakalat, Written Statement or Summon.

3.It is the specific case of the 1st defendant that he never signed in Ex.A2 sale agreement and the signature found in the sale agreement is not that of the 1st defendant. The respondents / plaintiffs objected to compare the disputed signature found in Ex.A2 with the admitted signature of the 1st defendant by filing detailed counter affidavit. The other objection of the plaintiffs to allow the application filed under section 45 of Indian Evidence Act is that the court himself can very well compare the disputed signature with the admitted signature found in the Vakalat and Written statement. The plaintiffs further contented that only with a view to delay the disposal of the suit, the revision petitioner has filed the above application and the same is deserves to be dismissed.

4.The learned trial Judge after holding enquiry was pleased to dismiss the application filed by the revision petitioner under section 45 of Indian Evidence Act by order and decree dated 10.06.2011 by holding that the opinion of the expert is not a conclusive proof. Further the revision petitioner has not produced the admitted signature of him for the contemporaneous period of Ex.A2.

5.I have heard Mr.K.Govi Ganesan, learned counsel appearing for the petitioner. No representation on behalf of the respondents.

6.I have gone through the entire records and from the records, it is seen that the 1st defendant sought to compare the disputed signature found in Ex.A2 along with his admitted signature found in the Vakalat, Written Statement and Summon. While dealing with the issue of comparing the disputed signature of the parties with the admitted signature for expert opinion, in the present case, the disputed signature of the 1st defendant found in Ex.A2 sale agreement is dated 29.12.2007 and the present suit for specific performance was filed on 09.01.2009 i.e., after 1 year. The 1st defendant might have received summon after 09.01.2009 and in the summon the signature of the 1st defendant shall be there. Apart from that the 1st defendant should have filed Vakalat immediately on the 1st hearing of the suit i.e., might be in the month of Feb 2009. Further, the 1st defendant filed written statement on 22.06.2009 wherein he has specifically denied the execution of Ex.A2 sale agreement. Thereafter, the duty is caused upon the plaintiff to file an application seeking for expert opinion to compare the disputed signature found in Ex.A2 with the admitted signature. But the plaintiff failed to do so. Therefore the

revision petitioner filed application under section 45 of the Indian Evidence Act seeking for expert opinion to compare the disputed signature found in Ex.A2 with his admitted signature.

7.As stated supra, the disputed signature found in Ex.A2 is dated 29.12.2007 and the admitted signature found in vakalat may be before Feb 2009 i.e., the receipt of summon in O.S.No.89 of 2009 and Vakalat filed in the said suit. In between 29.12.2007 and Feb 2009, the gap is hardly 1 year and 2 months only. Therefore the trial court committed an error in holding that the 1st defendant / revision petitioner failed to produce his admitted signature for the contemporaneous period of Ex.A2.

8.As stated above, the court is not barred from sending the disputed signature for comparison to an expert merely because the time gap between the admitted signature and the disputed signature is long. In this case, the time gap is only 1 year and 2 months to compare the disputed signature found in Ex.A2 along with admitted signature of the revision petitioner.

9.In this context, it is useful to refer the Hon'ble Full Bench

Judgment of High Court of Hyderabad reported in **2016(2) CTC 481** in the case of **Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and ors** wherein at paragraph 33 & 36 it is held as follows:

“33. For the reasons aforementioned, we answer the reference thus:

No time could be fixed for filing Applications under section 45 of the Indian Evidence act for sending the disputed signature or Writings to the Handwriting Expert for comparison and opinion and same shall be left open to the direction of the Court; for exercising such direction when exigencies so demand, depending upon the facts and circumstances of the each case.

We accordingly answer the reference as under:

36. It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting / Signature with the admitted Handwriting / Signature under Section 45 of the Indian Evidence Act 1872. The Court is however not barred from sending the

disputed Handwriting / Signature for comparison to an expert merely because the time gap between the admitted Handwriting/ Signature and the Handwritings /Signatures is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwriting / Signatures with admitted Handwriting / Signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate Expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the Expert concerned to voice his conclusion as to whether the disputed Handwriting / Signature and the admitted Handwriting / Signature are capable of comparison for a viable Expert Opinion. The view expressed by the Division Bench in *Janachaitanya housing ltd -Vs- Divya Financiers*, 2008 (3) ALT 409 (DBO), as to the stage of the proceedings when an Application can be moved by a party under section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue”.

10. In the light of the discussion made above, I am of the considered opinion that the document Ex.A2 sought to be compared with the disputed signature of the 1st defendant with his admitted signature required to be sent for expert opinion to give an opportunity to the revision petitioner to establish his case which would sub serve substantial justice to the parties. Therefore the order of the trial court is liable to be set aside and accordingly it is set aside.

11. In the result:

(a) this Civil Revision Petition is allowed by setting aside the order and decree made in I.A.No.778 of 2010 in O.S.No.89 of 2009 dated 10.06.2011, on the file of the III Additional Sub-Court, Coimbatore;

(b) the trial Court is directed to send for the disputed signature of the 1st defendant found in Ex.A2 with his admitted signature found in the suit vakalath and written statement for expert opinion within a period of two weeks from the date of receipt of a copy of this order;

(c) on receipt of the opinion, the trial Court is directed to dispose the suit within a period of three months thereafter. No cost. Consequently, connected

miscellaneous petition is closed.

23.12.2016

Note: Issue order copy on 24.05.2017
Internet: Yes
Index: Yes

vs

To

The III Additional Subordinate Judge,
Coimbatore.

M.V.MURALIDARAN, J.

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