

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2016

Pronounced on : 25.10.2016

CORAM

The Hon'ble Mr.Justice M.V.MURALIDARAN

CRP.No.4217 of 2013

and

M.P.No.1 of 2013

and

CMP.No.4476 of 2016

V.Rajamani ... Petitioner/Plaintiff/Petitioner

Versus

Danabalan ... Respondent/Defendant/Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and decreetal order of the II Additional District Munsif Court at Erode, dated 10.10.2013 in I.A.No.390 of 2013 in O.S.No.641 of 2008.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.S.Kumaresan

O R D E R

The Civil Revision Petition has been filed against the Fair and decreetal order of the II Additional District Munsif Court at Erode, dated 10.10.2013 in I.A.No.390 of 2013 in O.S.No.641 of 2008.

2.The revision petitioner is the plaintiff in O.S.No.641 of 2008 on the file of the 2nd Additional District Munsif Court, Erode.

3.The case of the petitioner is that the petitioner / plaintiff has filed the above suit for specific performance on the ground that this respondent / defendant has agreed to sell the suit properties for a sum of Rs.20,000/- and on the sale agreement was executed on 08.09.2002 in respect of the suit

properties for a sum of Rs.20,000/-. On the same day, the respondent / plaintiff has paid a sum of Rs.15,000/- to the respondent / defendant as per the sale agreement dated 08.09.2002. The respondent / defendant should execute the sale deed in respect of the suit properties on or before 08.09.2008, on receipt of the balance sale consideration. But on the failure of execution of sale deed by the defendant, the revision petitioner/plaintiff has filed the suit for specific performance in O.S.No.641 of 2008 before the above said Court.

4.The case of the respondent/defendant in the written statement is that the respondent/defendant is the absolute owner of the suit properties and he was purchased the same on 24.11.1995, but he denied the sale agreement dated 08.09.2002 in favour of the petitioner/plaintiff. Apart from this, he also states that the period of agreement is false one since as per the agreement the agreement is valid for 6 years i.e., on or before 08.09.2008. The respondent/ defendant states that there is no necessity for the defendant to sell the properties. Hence, he denying in the written statement about the execution of the sale agreement dated 08.09.2002 and equally denied the signature found in the sale agreement dated 08.09.2002.

5.While pendency of the above suit, the respondent/defendant has filed I.A.No.390 of 2013 before the said Court that for getting handwriting expert opinion in the above suit on the ground that the petitioner/plaintiff has produced an unregistered sale agreement which is marked as Ex.A1 as if it was executed by the respondent/defendant.

6.The further case of the respondent/defendant is that he never signed in the said sale agreement but there was a financial transaction between the respondent/defendant and petitioner/plaintiff's son viz., Mr.Sureshababu. The respondent/defendant has also stated that the signature found in the 1st page of the agreement dated 08.09.2002 is admitted, whereas the signature found in the remaining pages or not belongs to the defendant and it should be compared by the hand writing expert for adjudication of the suit. Hence, he has filed the above application with a prayer to the trial Court that the signature found in the 1st page of Ex.A.1 and the remaining pages should be compared with hand writing expert for adjudication of the suit.

7.For the above application, the petitioner/plaintiff has filed his counter. In his counter, he alleged that the petition is false and fraudulent, since the respondent/defendant took a stand in the written statement that he never signed in the Ex.A1 whereas in Para-4 of the affidavit in I.A.No.390 of 2013, he said that the Ex.A1 is forged and fabricated one. As per his pleading there is no admitted signature found document has been

produced for comparison of signature with Ex.A1. The petitioner is taking inconstant plea, it itself demonstrated that the respondent/defendant has executed Ex.A1. The respondent/defendant differently signed in the Ex.A1 deliberately from page to page and the petition is highly belated one and hence the plaintiff sought for dismissal of the said application.

8.Considering both side cases of the respondent / defendant and the petitioner/plaintiff, the trial Court has allowed the above application on 10.10.2013 on the ground that the signature found in the 1st page of the Ex.A1 is of the respondent/defendant and the remaining signatures found in the same are not that of the respondent/defendant. In order to find out the truth the signature found in the remaining pages of the Ex.A1 should be compared with signature found in the 1st page of Ex.A1. Therefore, on the limited scope only the trial Court consider for the entire suit is travelling on the Ex.A1 and stated that the trial Court fully convinced the plea of respondent/defendant. Therefore, the learned Judge allowed the above application and appointing one Mr.D.Thirunavukarasu, as Advocate Commissioner, directed to get the documents concerned for comparison of signature from the Court and handed it over to the Forensic Department and again he should obtain the report from the Forensic Department and submit before the trial Court as early as possible. Challenging the said order, the petitioner, who is the respondent / plaintiff in the Interlocutory Application has filed the present civil revision petition in CRP.No.4217 of 2013.

9.The case of the petitioner is that the respondent / defendant took a stand in the written statement is that he never signed in the Ex.A1 whereas in Para-4 of the affidavit in I.A.No.390 of 2013, he said that the Ex.A1 is forged and fabricated one and he admitted the signature found in Ex.A1 of the 1st page, which is totally contrary and the respondent / defendant has taken inconstant plea itself demonstrated that the respondent / defendant executed in Ex.A1 in favour of the petitioner.

10.The case of the petitioner is that though the respondent / defendant has sought for comparison, but he has not produced any document which contains contemporary signature for comparison. Therefore, he prayed this Court to allow the civil revision petition and to set aside the I.A.No.390 of 2013 in O.S.No.641 of 2008 dated 10.10.2013.

11.The case of the respondent/defendant is that infact the respondent/defendant has admitted his signature found in the Ex.A1 of the 1st page whereas he denied the signature found in other pages are not signed by him. Therefore, he sought for the comparison.

12. Heard Mr.P.Valliappan, learned counsel appearing for the petitioner and Mr.S.Kumaresan, learned counsel appearing for the respondent.

13. Admittedly, the respondent/ defendant clearly stated that in his affidavit that the respondent / defendant has admitted the signature found in the 1st page in Ex.A1. But, he denied the signature found in other pages. Therefore, the learned trial Court has clearly stated that he has not produced any other document for comparison, but the admitted portion of page 1 of the Ex.A.1 can be compared with the other pages of Ex.A1. To support the case of the petitioner / plaintiff, he has produced two judgments of the Hon'ble Supreme Court is as follows:-

(1) (N.Chinnasamy v. P.S.Swaminathan) reported in 2006 (4) CTC 850 (2)2004 5 SCC .

"When defendant disputes signature in document relied on by plaintiff it is for plaintiff to take steps for examination of disputed signature by sending document to handwriting expert - Defendant filed written statement disputing signature in agreement and five years thereafter filed Application to send document for comparison by expert with admitted signature without referring to any document containing admitted signature - Dismissal of Application by Trial Court upheld."

(2) (Thiruvengadam Pillai v. Navaneethammal and Another) reported in (2008) 4 Supreme Court Cases 530

"Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the defendants, it was for the defendants to establish that the document was forged or concocted, is not sound proposition. The first appellate court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first defendant had executed the agreement and not on the first defendant

to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true."

14.I heard the arguments of both sides and perused the records and the above citation produced by the petitioner. In fact, the Hon'ble Apex Court held that for comparison of the disputed signature, the parties concerned should be produced the other documents. But, in the case in hand, the defendant himself is admitted that the signature found in Ex.A1 of the 1st page is signed by the defendant whereas he denying the other signature found in other pages of Ex.A1. When the defendant admitted the 1st page of his signature, there is no other document is necessary to produce by the defendant for comparison of the signature found in the other pages 2 and 3 of the Ex.A1 since the authority concerned may considered that the signature found in 1st page of Ex.A1 to be compared with the pages 2 and 3. Therefore, the above citation referred by the petitioner is not applicable to the present case. Consider the case of the respondent/defendant, the trial Court is allowed the said application, which is not requirement for interference by this Court. Therefore, the Advocate Commissioner is proceed to produce to the Ex.A1 before the hand writing expert to compare the signature of the defendant in the 1st page with the pages 2 and 3 of the Ex.A1.

15.Therefore, I am inclined to pass the following orders:-

(a) this civil revision petition is dismissed by directing the Advocate Commissioner to file his report as per the order passed in I.A.No.390 of 2013 in O.S.No.641 of 2008 dated 10.10.2013 within a period of one month from the date of receipt of a copy of this order.

(b) thereafter, the trial Court is hereby directed to expedite the trial and dispose of the suit in O.S.No.641 of 2008 within a period of three months from the date of receipt of the report of the Advocate Commissioner and both the parties are hereby directed to co-operate for early disposal of the suit without getting any adjournment.

16.Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The 2nd Additional District Munsif,
Erode.

+1cc to Mr.S.Kumaresan, Advocate, S.R.No.61093
+2cc's to Mr.P.Valliappan, Advocate, S.R.No.61440

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CNR (CO)
CA(24/11/2016)



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