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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.11.2016
CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (MD) No. 2039 of 2009

and

M.P. (MD) No. 1 of 2009 and

C.M.P. (MD) No. 11598 of 2016

Salamuthu

.. Petitioner/Petitioner/
2nd Defendant

Vs.

K.N. Lakshmanan

.. Respondent/Respondent/
Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed on 07.08.2009, in I.A.No.533 of 2009 in O.S.No.164 of 2007 on the file of the learned District Munsif, Sivagangai.

For Petitioner : Mr.R.Vijayakumar

For Respondent : Mr.Pala.Ramasamy

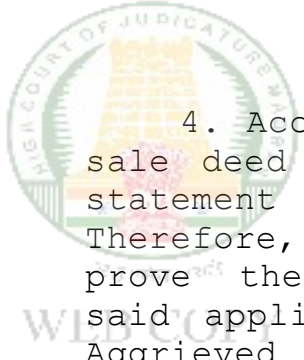
O R D E R

This Civil Revision petition arises out of the order passed by the learned District Munsif, Sivagangai, in I.A.No.533 of 2009 in O.S.No.164 of 2007, dated 07.08.2009.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent.

3. *The facts of the case as follows:-*

The respondent herein filed a suit in O.S.No.164 of 2007 before the District Munsif Court, Sivagangai, for permanent injunction against the Revision petitioner herein. In the aforesaid suit, the Revision petitioner filed the present application in I.A. No.533 of 2009, for appointment of Advocate Commissioner to obtain an expert opinion after comparing the signature of the second defendant found in the sale deed, dated 29.05.2001 and the thumb impression with the signatures found in the documents filed by the petitioner and other documents related to the aforesaid suit.



4. According to the Revision petitioner, the execution of the sale deed was a fabricated and forged document. This specific statement was made by the petitioner in the written statement. Therefore, the petitioner has filed the present application to prove the signature made in the sale deed was a forged one. The said application was erroneously dismissed by the Court below. Aggrieved the same, the present Civil Revision petition has been filed.

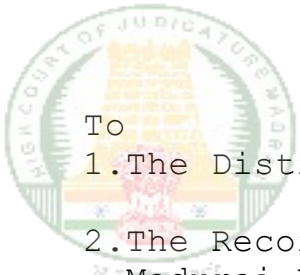
5. According to the learned counsel for the petitioner, the execution of the alleged sale deed dated 29.05.2001 was forged one and the said specific statement was made in the written statement by the Revision petitioner/second defendant, and also questioning the genuineness of the sale deed. The present application was filed for appointment of Advocate Commissioner, to send the said sale deed for comparison of the expert opinion. Therefore, no prejudice will be caused to the respondent, if the application was allowed. The Court below has wrongly stated that the Revision petitioner has no locus standi to file the present application. Therefore the present Civil Revision petition has been filed and this Court can interfere with the order passed by the Court below in the present application and may allow the Revision petition.

6. The learned counsel for the respondent would submit that the respondent herein/plaintiff filed a suit. The prayer in the aforesaid suit was only for permanent injunction. Therefore, the respondent/plaintiff has to establish the case by providing oral and documentary evidence filed before the Court to prove the possession of the suit property. According to the respondent, burden of proof lies with the respondent/plaintiff to prove the case, as prayed in the suit. Therefore, there is no necessity to appoint an Advocate Commissioner to compare the said signature found in the alleged sale deed. The respondent had also objected for allowing the said application. Therefore, the present application filed by the petitioner herein cannot be entertained. Hence, the order passed by the Court below, rejecting the present application is perfectly valid in law.

7. Therefore, any dispute arising out of the said sale deed, it is for the parties concerned to establish the case in the suit. By taking into consideration of the facts and circumstances of the case, this Court does not interfere with the order passed by the Court below in I.A.No.533 of 2009.

8. Hence, the Civil Revision petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Co)



To

1.The District Munsif, Sivagangai.

2.The Record Keeper, V.R.Section,

Madurai Bench of Madras High Court, Madurai.

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+1cc to Mr.R.Vijayakumar, Advocate Sr.No. 74279

pmu

AE/MR/VB/01.02.2017/3p/4c

C.R.P. (MD) No.2039 of 2009
and

M.P. (MD) No.1 of 2009 and
C.M.P. (MD) No.11598 of 2016
30.11.2016