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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.12.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)Nos.2145 & 2146 of 2015 (PD)

and

M.P.(MD)Nos.1 & 1 of 2015

Krishnan, S/o.Mayalagu

.. Petitioner
in both the C.R.Ps.

Vs.

1.Jayaraman, S/o.Sundarrajan

2.Narasingam, S/o.Sundarrajan

3.Sundarrajan, S/o.Sundarrajan

.. Respondents
in both the C.R.Ps.

Prayer in both the C.R.Ps.: Civil Revision Petitions filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 24.07.2015, made in I.A.Nos.328 and 329 of 2015 in O.S.No.50 of 2011 on the file of the District Munsif, Sivagangai and set aside the same.

For Petitioner : Mr.VR.Shanmuganathan
(in both the C.R.Ps.)

For R1 & R3
(in both the C.R.Ps.) : Mr.R.Vijayakumar

For R2 : No Appearance
(in both the C.R.Ps.)

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decretal order, dated 24.07.2015, made in I.A.Nos.328 and 329 of 2015 in O.S.No.50 of 2011 on the file of the District Munsif, Sivagangai.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. Facts of the case:-

(i) The petitioner is the plaintiff and the respondents are the defendants 1, 2 and 4 in the suit in O.S.No.50 of 2011 on the file of the District Munsif Court, Sivagangai. The petitioner filed the suit for declaration to declare the sale deed dated 27.06.1997, executed by the fifth defendant in favour of the first respondent as null and void and also for partition claiming 1/9th share. The fifth defendant is the father of the petitioner.

<https://hcservices.ecourts.gov.in/hcservices/> The respondents filed written statement and contested the suit.

(iii) After framing issues, the trial has commenced. In

the trial, the petitioner examined himself as P.W.1 and the fifth defendant was examined as P.W.2. After completion of evidence on behalf of the plaintiff and defendants, the suit was posted for arguments.

(iv) The petitioner filed two applications in I.A.No.328 of 2015 to re-open and I.A.No.329 of 2015 for appointment of Advocate Commissioner to obtain an opinion from the Handwriting expert with regard to the signature and thumb impression of the fifth defendant in Exs.B.1 and B.2 with the admitted signature. According to the petitioner, the fifth defendant as P.W.2 denied having executed the sale deed Ex.B.2.

(v) The respondent filed counter affidavit and opposed the applications and submitted that the fifth defendant as P.W.2 in the cross-examination admitted that differences of opinion have arisen between him and his son/plaintiff, due to the fact that, he executed the sale deed Ex.B.2 in favour of the first respondent. The petitioner also admitted in the plaint in paragraph 3, the execution of the sale deed by the fifth defendant in favour of the first respondent. The applications are filed only to drag on the proceedings and prayed for dismissal of both the applications.

(v) The learned District Munsif, Sivagangai, considering the averments made in the affidavit and the counter affidavit, dismissed both the Interlocutory Applications.

4. Against the said dismissal order dated 24.07.2015, the petitioner has filed the present Civil Revision Petitions.

5. The learned counsel for the petitioner submitted that the learned District Munsif erred in holding that P.W.2 admitted the execution of sale deed Ex.B.2 in favour of the first respondent. On the other hand, in his deposition, he has categorically denied the execution of the sale deed and the disputed signature in Ex.B.2. The learned District Munsif ought to have seen that there is no delay in filing the application. It is well settled that an application cannot be decided on the ground that evidence had been completed. The petitioner is disputing the execution of the sale deed by the fifth defendant, signature and the thumb impression in the sale deed and therefore, it is just and necessary to obtain an opinion of Handwriting expert.

6. Per contra, the learned counsel for the respondents 1 and 3 submitted that the fifth defendant as P.W.2 has admitted the execution of sale deed. Further, the petitioner has also admitted the execution of the sale deed by the fifth defendant in the plaint, but has stated that it is only a nominal sale deed. The petitioner did not allege in the plaint that the fifth defendant's signature and thumb impression were forged in the sale deed. Only to drag on the proceedings, the applications are filed and therefore, the learned counsel prayed for dismissal of both the Civil Revision Petitions.

7. I have heard the learned counsel for the petitioner and respondents 1 and 3 and carefully perused the materials available on record.

8. The contention of the petitioner is that the fifth



defendant did not execute the sale deed Ex.B.2 in favour of the first respondent. The fifth defendant was examined as P.W.2 and in the chief-examination, he denied the execution of the sale deed. On the other hand, the learned counsel for the respondents submitted that the petitioner did not allege the signature in the sale deed Ex.B.2 is not the signature of the fifth defendant and it is a forged signature. In the plaint, he has admitted that the fifth defendant executed the sale deed. In the cross-examination also, the fifth defendant admitted that having executed the sale deed in favour of the first respondent and due to that, difference of opinion has arisen between the fifth defendant and his son/petitioner. The learned District Munsif has considered all these aspects and has also given cogent and valid reasons for dismissing both the applications. Further, it is pertinent to note that the Court can compare the admitted signature and the disputed signature and can come to a conclusion that whether the disputed signature is genuine or not.

9. For the above reasons, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Assistant Registrar(CS I)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif,
Sivagangai.

+1cc to M/s.R.Vijaya Kumar, Advocate, in SR No.83285

+1cc to M/s.VR.SHANMUGANATHAN, Advocate, in SR No. 83463

smn2

AAM EM JMP 27.01.2017 3P 4C

Common order in

C.R.P. (MD) Nos.2145 & 2146 of 2015 (PD)
and

M.P. (MD) Nos.1 & 1 of 2015
22.12.2016