

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.4.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1391 of 2017
and
CMP.No.6437 of 2017

1. Vallithai
2. Murugesan .. Petitioners

Vs.

G.Dhanalakshmi (died)
1. G.Revathi
2. G.Arun
3. M/s.V 5 Communications,
No.553/A1, Fair Deal Corner,
D.B. Road, R.S.Puram,
Coimbatore.

4. A.M.Samsu Ali.

Gurusamy (died) .. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 21.02.2017 made in I.A.No.2 of 2017 in O.S.No.92 of 2006 on the file of the III Additional District Court, Coimbatore.

For Petitioner : Mr.V.Anandhamurthy

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 21.02.2017 made in I.A.No.2 of 2017 in O.S.No.92 of 2006 on the file of the III Additional District Court, Coimbatore.

2. Facts of the case:-

(i) The petitioners are the plaintiffs in the suit and they have filed the above suit for specific performance directing the defendants 1 to 3 to execute sale deed in her favour conveying both the items of suit property free from all encumbrance receiving the balance sale price of Rs.3,50,000/- and putting her in such possession as is capable of and for other reliefs.

(ii) According to the petitioners, the first petitioner and first defendant entered into an agreement of sale on 27.3.2002. The second petitioner, who is the husband of the first petitioner and 6th defendant, who is the husband of the first defendant are the attestors to the agreement of sale. The defendants 2 and 3 filed written statement on 25.10.2006 and denied all the statements in

the plaint and submitted that the first defendant did not execute the agreement of sale and 6th defendant did not attest the sale. They filed the additional written statement disputing the genuineness of the agreement of sale and also stated that the agreement of sale is a forged one. Pending the suit, her husband was impleaded as 6th defendant. The 6th defendant also filed written statement denying having signed as attesor and denied that the first respondent agreed to sell the property and entered into an agreement of sale with the first plaintiff.

(iii) Trial commenced. The second petitioner/second plaintiff was examined as P.W.1. The husband of the first defendant was impleaded as 6th defendant and after completion of evidence on behalf of the parties, the petitioner filed I.A.No.2 of 2016 to direct the respondents to produce into court the documents containing the signature of the sixth defendant and to pass an order directing sending of the sale agreement in Ex.A.1 along with other documents containing the signatures of the sixth defendant to the handwriting expert for comparison and to call for a report.

(iv) The respondents filed counter and opposed the said

application stating that they have filed written statement in the year 2006 itself denying the execution of the agreement of sale and signature of the 6th defendant that he attested the agreement of sale and also stated that the agreement of sale is a fabricated one. The petitioners have not taken any steps at the earliest for comparison of the signature of 6th defendant in the agreement of sale and they have filed this application only to drag on the proceedings.

(v) The learned Judge after considering the averments made in the affidavit and the counter affidavit and also considering the materials on record and also the fact that in the written statement filed in the year 2006 itself, the defendants have disputed the signatures of defendants 1 and 6 in the agreement of sale came to a conclusion that the agreement of sale is a fabricated one as contended by the respondents. The learned Judge also gave a finding that after being impleaded as 6th defendant, the 6th defendant also denied his signature and after conclusion of evidence of P.W.1, he was recalled twice and he was cross examined. The learned Judge further gave a finding that the petitioners have filed the suit in the year 2006 and filed application

in the year 2017 and it is for the petitioners to prove the genuineness of the signature of first defendant, the executant of the agreement of sale. On the above stated grounds, the learned III Additional District Judge, Coimbatore, dismissed the application.

3. Against the order of dismissal, the petitioners have come out with the present Civil Revision Petition.

4. The petitioners have filed suit for specific performance for agreement of sale. The respondents disputed the agreement of sale that as a forged one. The petitioners filed application for comparison of signature of 6th defendant to obtain opinion from the handwriting expert. At that time, the signature of the first defendant was admitted. In the circumstances, the said application filed by the petitioners was not pressed. In the additional written statement, again they have stated that the signature of the 6th defendant is a forged one.

5. In the circumstances, the petitioners have filed the present application in I.A.No.2 of 2017 for comparison of the signature of the 6th defendant and to get opinion from the handwriting expert

with regard to the genuineness of the signature of the 6th defendant. Without proper consideration and contention of the petitioner, the learned Judge dismissed the application. According to the learned counsel for the petitioner, the reason given by the learned Judge is not correct and unsustainable in law.

6. The contention of the learned counsel for the petitioners is that the signature of the 6th defendant in the agreement of sale as an attester is disputed in the additional written statement which necessitated the petitioners to file an application for getting opinion from the handwriting expert with regard to the genuineness of the signature of the 6th defendant in the agreement of sale. From the materials on record, it is seen that the additional written statement was filed on 16.2.2008. From that date onwards, till the date of filing of the application in the year 2017, the petitioners have not taken any steps for comparison of the signature of the 6th defendant found in the agreement of sale with his admitted signature and to obtain the opinion from handwriting expert. After completion of evidence and after the death of the 6th defendant, petitioners have come out with the present application, belatedly.

7. The learned Judge considering all the above facts has rightly dismissed the application holding that it is for the petitioners to prove the genuineness of the signature of the 6th defendant in the agreement of sale. The signature of the 6th defendant as attester is not going to improve the case of the petitioners if they fail to prove the signature of the 6th defendant.

8. In view of the above, this Court is of the considered opinion that the order of the learned Judge does not warrant interference.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.04.2017

Index : Yes
Internet : Yes
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To

The III Additional District Court,
Coimbatore.

V.M.VELUMANI, J.

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C.R.P.(PD)No.1391 of 2017

17.04.2017

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