

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **23.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.1296 of 2014
and
M.P.No.1 of 2014

1. C.Mani
2. C.Singaram .. Petitioners
vs

C.Kandasamy .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.02.2014 passed by the learned District Munsif, Harur in I.A.No.8 of 2014 in O.S.No.27 of 2011.

For Petitioners : Mr.P.Mani

For Respondents : No appearance

ORDER

Heard the learned counsel for the petitioners. Despite service being effected on the respondent and his name also printed in the cause list, no one appeared.

2. The plaintiffs are the revision petitioners. Aggrieved by the order passed by the Court below in dismissing the application filed by them under Order 26 Rule 10-A and Section 151 of the Code of Civil Procedure for comparison of the disputed signature of the respondent/defendant with that of his admitted signature in vakalat and written statement, the revision has been filed.

3. The plaintiffs filed the suit for specific performance. It is contended by the plaintiffs that the suit property belonged to the defendant and that he agreed to sell the same to the plaintiffs. According to them, they also paid an advance amount of Rs.55,000/- and the defendant also executed the sale agreement. However, during trial, the defendant has denied the same. Hence, they have filed the above application seeking comparison of the disputed signature of the defendant with that of his admitted signature.

4. The said application was resisted by the defendant by contending that only to drag on the proceedings, the plaintiffs have come up with the above application when the suit is in the

part-heard stage and that too, when the case is posted for defendant's side evidence. Accordingly, he prayed for the dismissal of the same.

5. The court below, after hearing both sides, had dismissed the application by holding that comparison of signatures must be made only with contemporaneous documents and not with that of the vakalat and written statement filed by the defendant and the plaintiffs have not produced any admitted document for comparing the same with the disputed document.

6. Challenging the said order, the present revision is filed.

7. As the defendant denied his signature in the sale agreement dated 22.05.2009, the plaintiffs have taken out the application to compare the disputed signature of the defendant in the sale agreement with that of the admitted signatures found in vakalat, written statement, acknowledgment card and the proof affidavit. The defendant objected to the same as an exercise of procrastination.

8. Admittedly, the trial has commenced and the suit is posted for defendant's side witness. It is settled principle that comparison of signature has to be made only with the contemporaneous documents, as signatures may vary with time. The date of sale agreement is 22.05.2009 and the suit is filed in the year 2011. The signature of the defendant available with the plaintiffs are only those on vakalat, written statement and proof affidavit, which are subsequent to the suit, after the dispute arose. Hence, unless the admitted signatures available on contemporaneous documents are produced, comparison cannot be done and an expert opinion cannot be obtained. Besides the application has been filed after the evidence on the side of the plaintiffs is over. Even presuming that no document of the defendant with his admitted signature will be available with the plaintiffs, any attempt of this nature should have been tried by the plaintiffs at the earliest, before the commencement of the trial.

9. Therefore, in the absence of any document with the admitted signature of the defendant and filing the application at the belated stage, after commencement of trial, would only disentitle the plaintiffs for the relief sought for.

10. In such circumstances, I do not find any infirmity in the order passed by the Court below in rejecting the application filed by the petitioners. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.02.2017

vj2

Index : Yes/No

Internet: Yes

To

The District Munsif, Harur

PUSHPA SATHYANARAYANA,J.,

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