

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1392 of 2014

Kandasamy

...

Petitioner

Vs

1.S.Noor Mohammed

2.A.Mehrunisa

3.V.Ranjitham

4.Syed Mohamed

...

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal orders dt.20.09.2013 in I.A.No.201 of 2013 in O.S.No.263 of 2012 on the file of the District Munsif Court, Pollachi.

For Petitioner : Ms.Kundavai

For Respondents : Mr.L.Mouli for
R1 & R2
No appearance for
R3 & R4

ORDER

This Civil Revision Petition has been filed against the fair and decreetal orders dt.20.09.2013 in I.A.No.201 of 2013 in O.S.No.263 of 2012 on the file of the District Munsif Court, Pollachi.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.263 of 2013 on the file of District Munsif Court, Pollachi. The petitioner has filed the said suit against the respondents for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the suit property. According to the petitioner, he is in possession and enjoyment of the suit property based on the lease cum sale agreement executed by the respondents. The respondents filed written statement denying execution of lease cum sale agreement. According to them, it is a fabricated one, prepared for the purpose of filing of the suit. The respondents filed I.A.No.201 of 2013 under Order XXVI Rule 10A r/w Sections 75 & 151 CPC for obtaining an opinion from a qualified handwriting expert by comparing the signatures in the lease cum sale agreement produced as Document No.1 alongwith plaint with the admitted signatures in the sale deed dated 19.11.2009 registered as Doc.No.6709 of 2009 with regard to the genuineness of the signature. The petitioner filed counter affidavit and contended that the signature in the sale deed is not contemporaneous signature. The sale deed is of the year 2009. The lease cum sale agreement is of the year 2011. The respondents have not produced any contemporaneous admitted signatures of the

year 2011. The signature may differ in two years time.

3. The learned Judge, considering the averments in the plaint, written statement and the fact that the respondents have denied their signatures in the lease cum sale agreement and petitioner claims to be in possession of the suit property based on the lease cum sale agreement, held that disputed signatures in the lease cum sale agreement has to be compared with the admitted signatures in the sale deed and issued direction for obtaining opinion from a qualified handwriting expert with regard to the signatures in the sale deed dated 19.11.2009 and the alleged lease cum sale agreement dated 15.04.2011.

4. Against the said order dated 20.09.2013 made in I.A.No.201 of 2013 in O.S.No.263 of 2012, the present Civil Revision Petition is filed by the petitioner.

5. The learned counsel for the petitioner submitted that the suit is for bare injunction and possession of the property is the criteria to decide the issue. Title of the parties is not an issue in the present suit. The respondents have not produced any contemporaneous signature and the learned Judge erred in passing

the order for comparison of signature. These contentions of the petitioner are untenable. A signature within three years of disputed signature is contemporaneous signature. In the present case, the respondents are seeking opinion of handwriting expert by comparing the admitted signature in the sale deed is dated 19.11.2009 with the disputed signature in the lease cum sale agreement, which is of the year 2011. The learned counsel for the petitioner relied on the judgment reported in **2001 (2) CTC 12 [D.Pandi v. The Dhanalakshmi Bank Ltd.]** in support of his contention.

14. With regard to expert's evidence, in *S. Gopal Reddy v. State of A.P.*, Their Lordships have held thus:- (Para 27) "..., The evidence of an expert is a rather weak type of evidence and the Courts do not generally consider it as offering 'conclusive' proof and, therefore, safe to rely upon the same without seeking independent and reliable corroboration. In *Magan Bihari Lal v. State of Punjab*, while dealing with evidence of a handwriting expert, this Court opined (at p.1093):

"We think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert.

6. The learned counsel for the respondents 1 & 2 submitted

that the petitioner is in possession of the property based on the lease cum sale agreement which is disputed by the respondents. In such circumstances, the learned Judge has rightly held that obtaining opinion from handwriting expert with regard to the disputed signature in lease cum sale agreement is necessary. In support of his contention, he relied on the judgment reported in **2016 (2)CTC 481 [Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and Ors.]**

24. The gist of the experts opinion, emerging from the above Report, is to the effect that it is not always necessary to have contemporaneous handwritings/signatures for comparison. However, as a general rule, it would be desirable to undertake comparison of admitted handwritings/signatures with disputed handwritings/signatures which fall within the range of 2 or 3 years from each other. Therefore, there can be no hard and fast norm as to when comparison can or cannot be undertaken owing to the time lag between the two sets of handwritings/signatures. Various other factors would have to be taken into consideration, as opined by the experts, quoted hereinbefore. Each case would turn upon its own facts and circumstances relating to the time lag, the change in the handwriting/signature, the capability of correlating the two sets and ultimately, the opinion of the expert himself as to whether the two sets can be compared. It is therefore not open to the Court to refuse to entertain an application seeking comparison of disputed handwritings/signatures with admitted handwritings/ signatures on the ground of a long lapse of time between the two sets of handwritings/signatures.

7. Heard the learned counsel for the petitioner as well as respondents 1 & 2 and perused the materials available on record.

8. It is admitted by both the learned counsel for the petitioner as well as respondents that the suit property was jointly purchased by both the petitioner as well as respondents vide sale deed dated 19.11.2009. The petitioner is claiming to be in possession of the property based on the lease cum sale agreement. The respondents denied the execution of the lease cum sale agreement. According to the petitioner, the signature is not contemporaneous signature. Sale deed is dated 19.11.2009 whereas lease cum sale agreement is dated 15.04.2011. An admitted signature within a period of three years from the disputed signature can be compared to obtain opinion of handwriting expert. The judgment relied on by the learned counsel for the petitioner do not advance the case of petitioner on the facts of present case and the judgment relied on by the learned counsel for respondent is applicable to the facts of the present case. In such circumstances, I do not find any irregularity or illegality in the order impugned in this revision warranting interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs.

24.11.2017

rgr

Index : Yes/No

To

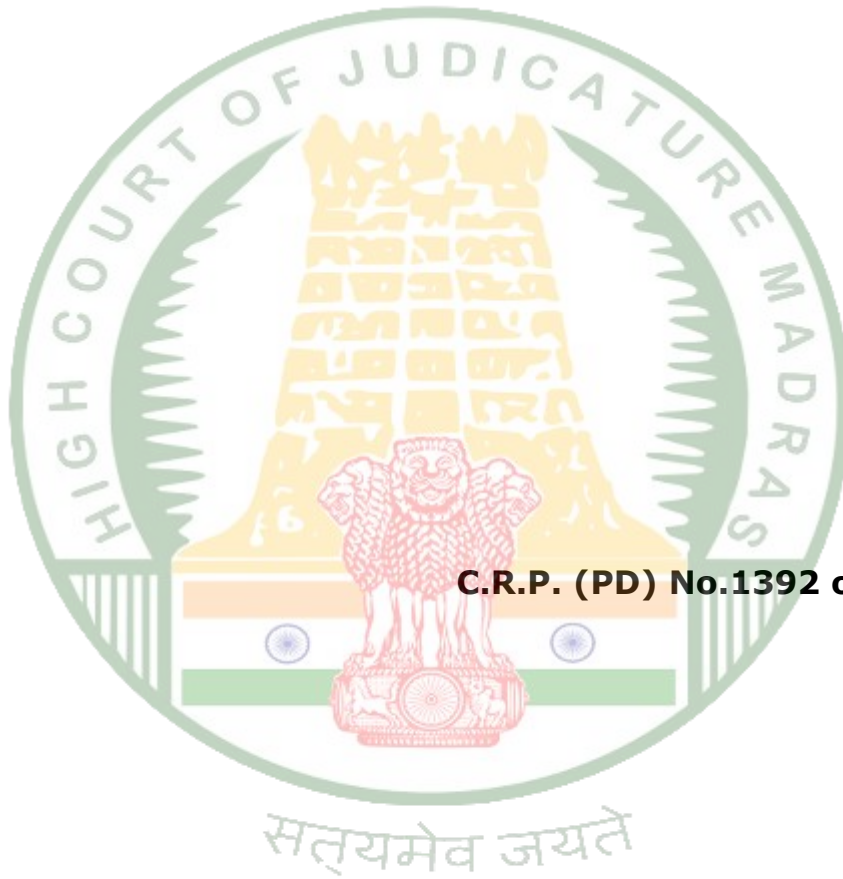
The District Munsif,
Pollachi.



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V.M.VELUMANI, J.

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