

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1582 of 2017
and CMP.No.7427 of 2017

Vinith Chordia

.. Petitioner

Vs.

1.G.Elumalai

2.Nilamangai @ Nalamangai

3.Naval Chordia

4.The Sub Registrar

Thirukazhukundram Taluk,
Kancheepuram District.

5.The Tahsildar

Thirukazhukundram Taluk,
Kancheepuram District.

(Respondents 2,4 & 5 are given up
since set exparte in the original suit)

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 12.04.2017 made in I.A.No.92 of 2017 in O.S.No.10 of 2006 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram and allow the Civil Revision Petition.

For Petitioner : Mr.M.Baskar
For R1/Caveator : Mr.S.Ramesh

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 12.04.2017 made in I.A.No.92 of 2017 in O.S.No.10 of 2006 by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram.

2. The petitioner is the fifth defendant in the suit. The first respondent/plaintiff filed a suit in O.S.No.10 of 2006 on the file of the District Munsif cum Judicial Magistrate Court, Thirukazhukundram, for declaration of title and for permanent injunction. The petitioner and the second defendant filed written statement on 19.01.2015 and 23.08.2006 respectively and they are contesting the suit. The trial commenced and the evidence on behalf of the first respondent was let in and closed. The first respondent examined two witnesses CW1 and CW2 (experts) with regard to the thumb impression and disputed signature in the Power of Attorney dated 24.02.1999 and admitted signature and thumb impression. The petitioner was examined as D.W.1. After completion of evidence, when the suit was posted for arguments, the petitioner filed I.A.No.92 of 2017 under Order VIII Rule 1A(3) of r/w Sec.151 of CPC, seeking permission for production of documents i.e., original expert opinion dated 10.08.2015 along with the documents given by Truth Labs. The first respondent filed

counter and opposed the said application. It is contended by the first respondent in the counter affidavit that the petitioner as DW1 has asserted that the petitioner had not taken any steps to get the expert opinion and also has not obtained any expert opinion with regard to the signature and thumb impression in the Power of Attorney and even no steps were taken by the petitioner for examination of records after receiving suit summons from the trial Court. Now after completion of deposition and cross-examination, at the fag end of the proceeding, the petitioner is seeking permission of the Court to produce the record dated 10.8.2015 being obtained from a private expert, which is legally impermissible. Hence, the first respondent prayed for dismissal of the application filed in I.A.No.92 of 2017.

3. The learned Judge considering the averments in the affidavit, counter affidavit and also admission made by the petitioner during cross-examination as D.W.1, dismissed the application in I.A.No.92 of 2017 referring to the judgment of the Hon'ble Apex Court in ***Bagain Construction Vs.Gupta Buildings Material Stores*** reported in **[2013(14) SCC]**, holding that the petitioner is trying to drag on the proceedings. Challenging the said order in I.A. No,92 of 2017, the petitioner is before this Court in the present Civil Revision Petition.

4. Heard the learned counsel appearing for the petitioner and the learned counsel for the first respondent.

5. According to the first respondent, the signature and the thumb impression in Power of Attorney dated 24.02.1999 are not his signature and thumb impressions and this has been proved in the earlier suit in O.S.No.61 of 2000, by obtaining an opinion from the Forensic Department. The first respondent examined CW1 and CW2 and they proved that it is not the signature of the first respondent. In the cross-examination, the petitioner as D.W.1 categorically admitted that he has not taken any steps to obtain expert opinion with regard to the signature and thumb impression and also he has not obtained any opinion from the Forensic Department. Having admitted so, now the petitioner has filed an application seeking permission to produce the expert opinion report and to mark the same in the evidence. It is also submitted by the learned counsel that already evidence was closed and when the case was posted for arguments, at that time, the petitioner has filed two applications to recall and reopen the witness for further evidence, which is not admissible.

6. In view of the categorical admission made by the petitioner

during cross-examination and that the application filed by the petitioner is devoid of merits, the learned Judge has rightly dismissed the application in I.A.No.92 of 2017. There is no illegality or irregularity in the order dated 12.04.2017 passed by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram, warranting interference by this Court.

7. In the result, the Civil Revision Petition is dismissed. However, the District Munsif cum Judicial Magistrate, Thirukazhukundram, is directed to dispose of the suit in O.S.No.10 of 2006, on merits and in accordance with law, within three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2017

Speaking order / Non-speaking order
Index : Yes

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To:
The District Munsif cum Judicial Magistrate,
Thirukazhukundram.

V.M.VELUMANI, J.

ds

C.R.P.(PD)No.1582 of 2017

27.04.2017

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