

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3813 of 2017

and

C.M.P.No.17828 of 2017

Pandurangan

..Petitioner

Vs.

Masilamani
..Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.24 of 2015 in A.S.No.20 of 2013 dated 31.07.2017 on the file of the Principal Subordinate Judge, Villupuram.

For Petitioner : Mr.D.Baskar

ORDER

According to the petitioner, the respondent has filed a suit in O.S.No.142 of 2009 before the Principal District Munsif Court, Tirukoilur for declaration of title and for recovery of possession. According to the petitioner, the suit properties belonged to the petitioner on the basis of the sale deed and the respondent was one of the attesting witnesses in the said sale deed. But the respondent has denied the signature in the sale deed. The learned counsel for the petitioner also submitted that burden is on the respondent, being the plaintiff, to prove his title. But the trial Court has decreed the suit.

The petitioner filed an appeal suit in A.S.No.20 of 2013, now pending before the Principal Subordinate Judge, Villupuram. When the appeal is pending, the petitioner has filed an application in I.A.No.24 of 2015 to send the signature of the respondent found in EX.B7 to compare with the admitted signatures found in EX.B1, B4 and B8. But the said application was dismissed by the Court below. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would further submit that the trial Court has failed to follow the principle of law that the burden of proof lies on the plaintiff. However, the trial Court has put the onus on the defendant by granting that the defendant has not taken steps to prove the title. Therefore, he filed an application for appointment of Advocate Commissioner.

3. Considering the submissions made by the learned counsel for the petitioner and perusal of the materials, admittedly the petitioner has filed an appeal in A.S.No.20 of 2013 and the same is pending. The petitioner has also filed an application in I.A.No.24 of 2015 for appointment of an Advocate Commissioner to compare the signatures of the respondent/plaintiff with EX.B1 and B7. A perusal of the appeal memorandum shows that the petitioner has specifically raised a ground that the initial burden was on the

respondent/plaintiff to prove his title. Therefore, in the light of the settled principles of law that the onus of proof lies with the plaintiff to establish his case to prove title before the trial Court and the same can be decided only at the time of trial. Therefore, at this belated stage the present application filed by the petitioner cannot be entertained and the same is liable to be dismissed.

4. It is useful to extract the order passed by this Court in the case of **Kannamma Vs. P.Sakunthala** in **CRP.PD.No.156 of 2009**, wherein this Court has held in paragraphs 9 and 10 as follows.

9. *In Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the Supreme Court observed thus :-*

"19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that

when the execution of an unregistered document put forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses."

10. In *P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals*, (2005 (3) CTC

12), Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert.

5. In the light of the above facts and decision of this Court cited supra, this Court is not inclined to entertain this Civil Revision Petition, as there is no error or illegality in the order passed by the court below. Accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.

30.10.2017

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
rna

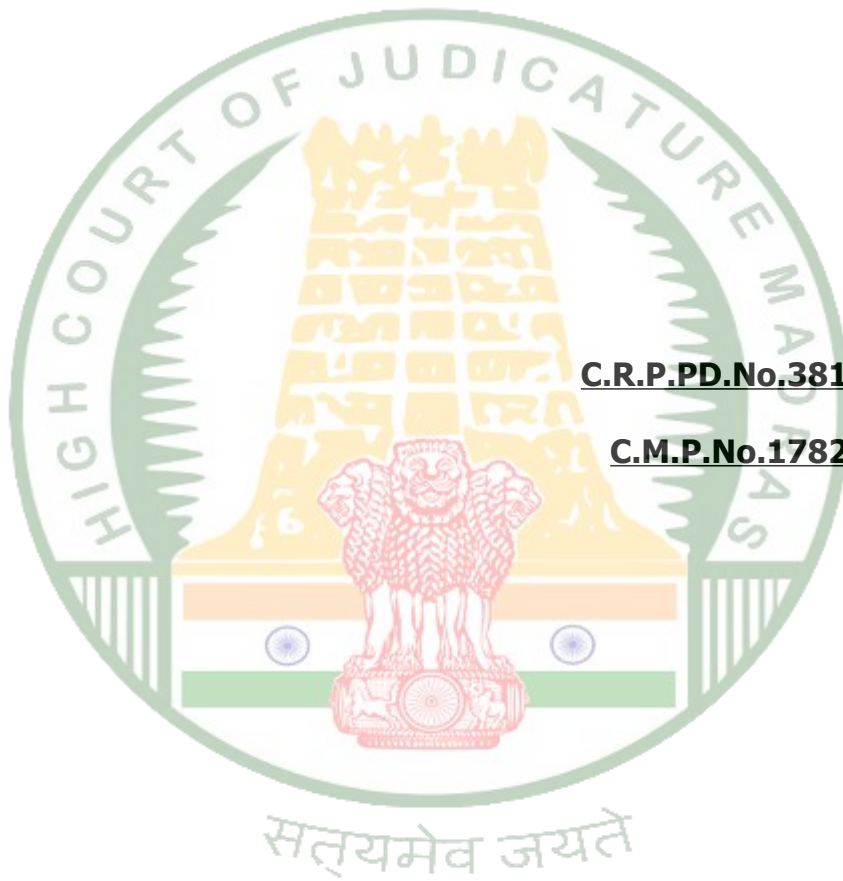
To

- 1.The Principal District Munsif Court,
Tirukoilur.
- 2.The Principal Subordinate Judge,
Villupuram.

WEB COPY

D.KRISHNAKUMAR. J,

rna



C.R.P.PD.No.3813 of 2017
and
C.M.P.No.17828 of 2017

WEB COPY

30.10.2017