

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM

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

CRP.(PD).No.4623 of 2017

and

C.M.P.No.21759 of 2017

K.Saravanan

..Petitioner

Vs.

1.M/s.Sakthi Aishwarya Spinning Mills(P) Ltd.,
No.36, Padmavathipuram,
6th Street, Avinasi Road,
Gandhinagar Post,
Thirupur District-5

2. P.Karupusamy

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 03.11.2017 made in IA.No.679 of 2017 in OS.No.728 of 2016 on the file of the I Additional District Munsif, Salem.

For petitioner : Mr.A.Thiyagarajan

For respondents : Mr.C.Prakasam for R1

ORDER

According to the petitioner, the respondents have filed a suit in OS.No.728 of 2016 on the file of the Principal District Munsif, Salem for permanent injunction. In the aforesaid suit, the respondents have also filed an application in IA.No.1336 of 2016 for interim injunction under Order 39 Rule 1 & 2 of the Civil Procedure Code. The revision petitioner has filed the present application in IA.No.679 of 2017 seeking expert opinion on genuineness of the document, Ex.P5. The said application has been dismissed. Therefore, the revision petitioner has filed the present Civil Revision Petition before this Court.

2. According to the revision petitioner would submit that the said document, Ex.P5 is only a xerox copy and the same is forged one. Hence, the revision petitioner has filed the present application to send the same for expert opinion.

3. The learned counsel for the respondents would submit that the plaintiffs have filed the above document and it is for the plaintiffs to prove the genuineness of the document before the court below. The respondents / plaintiffs have also filed other documents in

support of the case of the respondents. Therefore, the order passed by the court below is perfectly valid.

4. At this juncture, it is useful to extract the decision of this Court in the case of ***Kannamma Vs. P.Sakunthala*** in ***CRP.PD.No.156 of 2009***, wherein it is 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. Therefore, in the light of the aforesaid decision, it is for the respondents / plaintiffs to prove the disputed signature is forged one or not, since the defendant has denied the said document. Therefore, the burden is on the plaintiffs to prove that the genuineness of said document before the court below and hence, the Civil Revision

Petition is liable to be dismissed.

6. At this stage, the learned counsel for the revision petitioner requests this Court to direct the court below to dispose of the application in IA.No.1336 of 2016 as expeditiously as possible.

7. Thus, the Civil Revision Petition is dismissed, with direction to the court below to dispose of the IA.No.1336 of 2016 as expeditiously as possible. Consequently, the connected miscellaneous petition is closed. No costs.

13.12.2017

Speaking/Non-speaking order

Index :Yes/No

Internet:Yes/No

lok

Note: Issue order copy on 18.12.2017

सत्यमेव जयते

WEB COPY

To

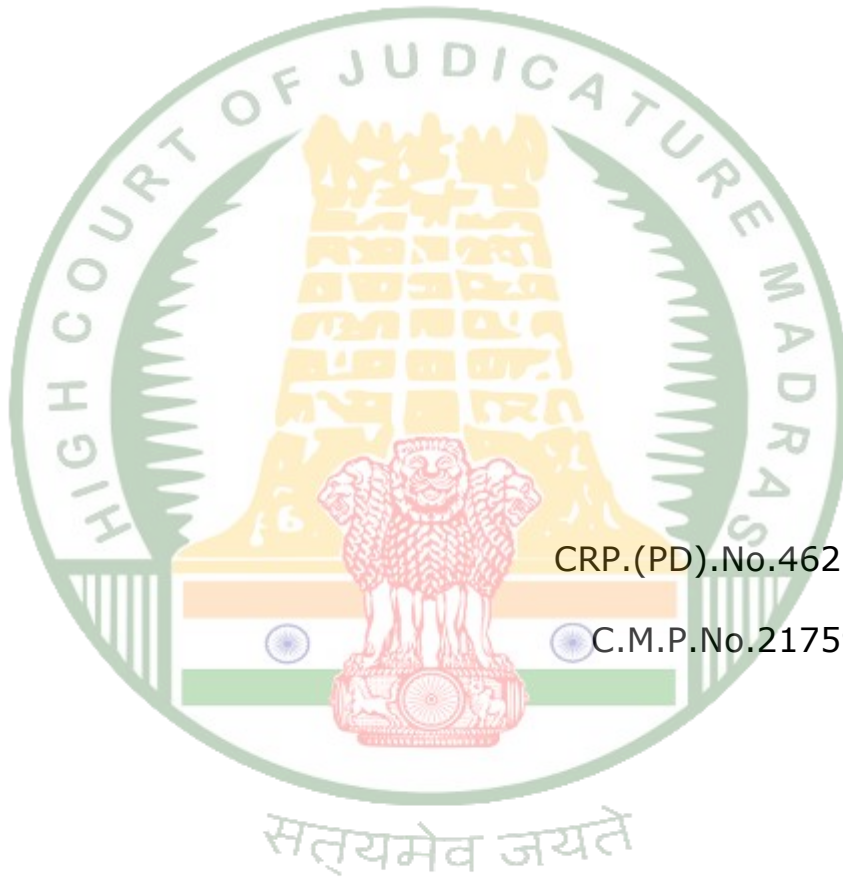
The I Additional District Munsif,
Salem.



WEB COPY

D.KRISHNAKUMAR.J,

lok



CRP.(PD).No.4623 of 2017
and
C.M.P.No.21759 of 2017

WEB COPY

13.12.2017