

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(NPD).No.3031 of 2015
and M.P.No.1 of 2015

Anbalagan

.. Petitioner

Vs.

1. Chandra
2. Chitra
3. Palanirajan
4. Devika
5. Sarala
6. Renuka

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.01.2015 made in I.A.No.72 of 2014 in A.S.No.25 of 2013 on the file of the District Court, Nagapattinam.

For Petitioner : Mr.S.Sounthar
For Respondents : Mr.M.Thamizhavel

ORDER

This civil revision petition is filed against the fair and decreetal order dated 09.01.2015 made in I.A.No.72 of 2014 in A.S.No.25 of 2013 on the file of the District Court, Nagapattinam.

2.The petitioner as a plaintiff filed a suit in O.S.No.60 of 2010 for specific performance. The defendants/respondents herein have filed a written statement and contested the suit. The suit was decreed, against which, the defendants/respondents preferred A.S.No.25 of 2013. During pendency of the appeal, the defendants/respondents filed an application in I.A.No.72 of 2014 to order for examination of the signature of one Nathamuni found in the sale agreement dated 05.08.2007, who is the husband of the first defendant and father of the defendants 2 to 6 and to compare the same with other admitted signatures through a handwriting expert and to get his report. The said application was allowed on 09.01.2015. Aggrieved over the same, the petitioner/plaintiff has preferred the revision.

3.Learned counsel for the petitioner would submit that there is a delay in filing the application. Even though the defendants/respondents raised a plea that the sale agreement dated 05.08.2007 is a forged one, they have not taken any steps to send the document to the Forensic Science Department for comparison. Furthermore, the defendants/respondents have not filed any admitted signature of the executant Nathamuni during the

contemporary period. That factum was also not considered by the first appellate Court. But the respondents have filed a report obtained from the private handwriting expert and on that basis, that application was allowed. Therefore, he prays for setting aside the fair and decreetal order passed by the first appellate Court.

4. Resisting the same, learned counsel for the respondents would submit that the petitioner is a tenant and that he got the document as a sale agreement and only after the death of the said Nathamuni, the petitioner has filed the suit for specific performance that too after three years. The respondents/defendants filed the written statement and disputed the genuineness of the sale agreement. Further, no separate issue for questioning the genuineness of the sale agreement was framed. But the trial Court has passed the decree of specific performance, against which, the defendants/respondents preferred A.S.No.25 of 2013. Now they want to prove that the sale agreement dated 05.08.2007 did not contain the signature of Nathamuni. They have also obtained opinion from the private handwriting expert and his report shows that the signature of Nathamuni in Ex.A1 sale agreement differs from his admitted signature. So it is necessary

for sending the same to the Forensic Science Department for comparison. That factum was rightly considered by the trial Court. It is further submitted that the defendants/respondents filed the document, which contains admitted signature of the said Nathamuni during the contemporary period. Therefore, he prays for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The petitioner as a plaintiff filed the suit for specific performance against the legal heir of the deceased Nathamuni, who is the alleged executant of the sale agreement. The petitioner/plaintiff is the tenant under the executant. But the legal heirs of the executant are disputed the sale agreement by stating that it does not contain signature of Nathamuni. The respondents/defendants filed the written statement and raised the plea that the sale agreement itself is not genuine.

7.It is seen from the typed set of papers that no separate issue was framed as to whether the sale agreement is true and

genuine. However, the trial Court framed only two issues; one is whether the plaintiff is entitled to the decree of specific performance and the second issue is to what relief, the plaintiff is entitled to. That suit was decreed, against which, the legal heirs of executant have preferred A.S.No.25 of 2013. During pendency of the appeal, the respondents filed I.A.No.72 of 2014 to prove that Ex.A1 sale agreement does not contain the signature of Nathamuni and that application was allowed on 09.01.2015.

8.The first limb of argument advanced by the learned counsel for the petitioner is that there was a delay in preferring the application. Admittedly, the alleged sale agreement was executed on 05.08.2007, the suit was filed in the year 2010 and the executant Nathamuni died in the month of November, 2007. The petitioner/plaintiff kept quite all along and after three years from the date of death of Nathamuni, he has filed the suit i.e., in the year 2010. In para-3 of the written statement itself, the respondents have raised the plea that the signature found in Ex.A1 sale agreement is the forged one. But no separate issue has been framed in this regard. Since the respondents lost their case in the trial Court, after preferring the appeal, they obtained opinion from

the private handwriting expert, who has given the report stating that the sale agreement does not contain the signature of Nathamuni and therefore, they want to send the sale agreement along with the document containing admitted signature of Nathamuni to the Government Handwriting expert's opinion.

9. Furthermore, the suit is for specific performance and it is filed after the death of executant. Since the petitioner is the tenant under the executant, I am of the view that the delay in filing the application is immaterial. Furthermore, the delay has been properly explained by the respondents.

10. The next limb of argument advanced by the learned counsel for the petitioner is that the opinion obtained from the private handwriting expert is not a gospel truth. But now the petitioner wants to fortify the same and that they filed the application to send the document to the Government Handwriting expert for comparison. Admittedly, the original document containing the signature of Nathamuni was filed. If another document containing the admitted signature of Nathamuni is filed, no prejudice would be caused to the petitioner. It is true, the

petitioner/plaintiff has to prove that the sale agreement is true and genuine. Even though the petitioner has examined the attestor to dispel the suspects as to whether the document is true and genuine, if the document is sent for comparison to the Government Handwriting expert, no prejudice would be caused to the petitioner. That factum was rightly considered by the first appellate Court. Hence, I do not find any reason for interfering with the findings of the first appellate Court and that the fair and decreetal order passed by the first appellate Court is hereby confirmed. The first appellate Court is directed to send the original document containing the admitted signature of the deceased Nathamuni during the contemporary period along with Ex.A1 sale agreement.

11.With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2017

Index:Yes/No
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To

The District Court, Nagapattinam.

R.MALA,J

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