

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN

C.R.P.No.452 of 2015

and

MP.No.1 of 2015

1.Mr.K.Navaneetham  
2.Mr.K.Ravichandran  
3.Mr.K.Murugan  
4.Mr.K.Selvakumar  
5.Mrs.K.Jayanthi  
6.Mrs.K.Meera

... Petitioners

Vs.

Mrs.M.Gomathi

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 27.08.2014 made in I.A.No.49 of 2013 in O.S.No.20 of 2011 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District.

For Petitioners: Ms.T.Dhanyakumar

For Respondent : Mr.S.Mukunth

O R D E R

The order passed by the Learned I Additional District Judge, Vellore, sending the suit document Ex.A1 for comparison of the signature with reference to the document in Ex.X1. is under challenge in the Civil Revision Petition at the instance of the defendants in O.S.No.20 of 2011.

2. The respondent herein filed a suit for specific performance in O.S.No.20 of 2011 before the Learned I Additional District Judge, Vellore. The suit was filed on the strength of a Sale agreement stated to have been executed by Thiru. C.Kannan, the father of the petitioners. The Petitioners filed a written statement denying the execution of the sale agreement.

3. The respondent produced a document, which was marked as Ex.X1 to prove the signature of Thiru.Kannan, who is stated to be the author of the Sale Agreement. When the document was shown

to RW1, the said witness appears to have denied the suggestion that it was the signature of Thiru.Kannan.

4. Thereafter, the respondent filed an application in I.A.No.49 of 2013 to send the suit document for expert opinion, taking into account the signature found in Ex.A1. The application was allowed by the learned Trial Judge. Feeling aggrieved, the petitioners have come up with this Civil Revision Petition.

5. Heard the Learned counsel for the Petitioners and the learned Counsel for the Respondent.

6. The suit in O.S.No.20 of 2011 was instituted by the respondent. It is the responsibility of the respondent to plead and prove that the Sale agreement was executed by none other than Thiru.Kannan, the predecessor in interest of the petitioners. The petitioners clearly denied the execution of document by Thiru.Kannan. The respondent therefore wanted comparison of the signature of Thiru.Kannan. It was only for the said purpose, the respondent produced the document which was marked as Ex.X1.

7. According to the respondent, Thiru.Kannan signed as a witness in Ex.A1 and as such, the said document is a valid piece of evidence to prove the signature in Ex.A1.

8. The learned Trial Judge while allowing the application filed by the respondent omitted to consider the moot point that the petitioners have not admitted the signature of Thiru.Kannan in Ex.X1.

9. The disputed signature can be sent for expert opinion only with reference to the signature found in another document which is admitted. There is no question of sending the disputed document for deciding the disputed signature.

10. The learned counsel for the respondent by placing reliance on the evidence of P.W.1 contended that there was no specific question posed by the petitioner to the said witness with regard to the signature of Thiru.Kannan as found in Ex.X1. The failure to put relevant question to the witness by the learned counsel for the petitioners would not amount to admission that Ex.X1 was signed by Thiru.Kannan as a witness.

11. The learned Trial Judge proceeded as if the signature found in Ex.X1 can be taken as the basis to examine the signature found in Ex.A1. Since the signature in Ex.B1 itself was disputed, there is no point in placing reliance on the said document. I am therefore of the view that the impugned order is liable to be set aside.

12. The order dated 27 August 2014 is set aside. It is open to the respondent to produce any other admitted document to prove the signature found in Ex.A1.

13. The Civil Revision Petition is allowed with the above observation. No costs.

Sd/-  
Asst.Registrar (CS II )

/true copy/

To Sub Asst. Registrar

The I Additional District and Sessions Judge,  
Vellore,  
Vellore District.

+1 cc to M/s.T.Dhanyakumar,advocate,sr.18021

+1 cc to M/s.Sarvabhauman Associates,sr.17891.

ss(co)  
krd 24/4

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