

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2017

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.Nos.1538 and 1539 of 2016
and
C.M.P.No.8353 of 2016

Dr.S.Ganesh Babu

.. Petitioner in both CRPs.

vs

S.Raffela

.. Respondent in both CRPs.

Prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and final orders dated 30.09.2015 and 22.08.2012 passed by the learned Principal Subordinate Judge, Coimbatore in I.A.No.1132 of 2012 in I.A.No.980 of 2010 in O.S.No.1119 of 2010 and I.A.No.980 of 2010 in O.S.No.1119 of 2010 respectively.

For Petitioner : Mr.P.Saravana Sowmiyan
in both CRPs.

For Respondents : Mr.A.Thiagarajan
in both CRPs.

COMMON ORDER

The defendant, in the suit filed by the plaintiff/respondent seeking specific performance of the agreement to sell, is the revision petitioner in both the revision petitions.

2. The short facts of the case would run thus:

The petitioner herein had filed IA No.980 of 2010 to issue a commission appointing an advocate commissioner to make scientific investigation to refer his disputed signatures found in the sale agreement dated 24.06.2006 by comparing with the admitted signatures found in the plaint documents 4 and 6, viz. postal acknowledgement and rejoinder and his vakalath and written statement. However, the said application was dismissed vide order dated 22.08.2012 on the ground that the signatures found on the vakalath and written statement are made subsequent to the suit notice and that the same cannot be allowed to be compared. The petitioner also earlier filed one another application in IA No.697 of 2011 seeking to receive certain additional documents, which contain his signatures as additional evidence. The said application was

allowed on 16.06.2012 by the learned trial Judge permitting the defendant to mark in evidence, the demand promissory notice executed by the petitioner dated 21.02.2005 and the bank challan dated 14.06.2006 as additional documents for comparison. The said I.A.No.980 of 2010 filed under Order 26 Rule 10 A r/w 45 of the Indian Evidence Act was dismissed, as the comparison of the signatures found on the vakalat and written statement or notices cannot be compared with the suit sale agreement unless signatures found on contemporaneous documents, which are marked before the court. As against the same, Review Application in I.A.No.1132 of 2012 was filed and the review also was dismissed by the Court below. Aggrieved by the dismissal of review application and I.A.No.980 of 2010, the above two revisions have been filed by the defendant.

3. Heard both sides.

4. It is contended by the learned counsel for the revision petitioner that when the application in I.A.697 of 2011, which was filed for receiving the additional documents contending the signatures of the petitioner in promissory note and bank challan was allowed on 16.06.2012, the application to send the documents for comparison filed I.A.No.980 of 2010 ought to have been allowed considering the

order passed in I.A.No.697 of 2011. The Court below allowed the application in I.A.No.697 of 2011 only to enable the petitioner to send those documents received in evidence to be compared by the expert. By dismissing I.A.No.980 of 2010, the order passed in I.A.No.697 of 2011 is rendered useless.

5. In a suit for specific performance, execution of agreement is denied by the defendant. The burden is on the plaintiff to prove the same. In the said process when the defendant had taken steps to send the signatures for the expert opinion, the learned trial judge without application of mind had dismissed the same. Admittedly, there is no challenge by the respondent to the order dated 16.06.2012 passed in I.A.No.697 of 2011 and I.A.No.980 of 2010 was dismissed only on the ground that the contemporaneous documents were not available to be compared with that of the signatures found on the agreement dated 24.06.2005. When the same is now made available by virtue of the order passed in I.A. No.697 of 2011, the learned Judge has lost sight of the same. Therefore, the order dated 22.08.2012 passed by the Court below in I.A.No.980 of 2010 in O.S.No.1119 of 2010 is set aside and **CRP PD.No.1539 of 2016 is allowed**. Accordingly, the court below is directed to appoint a commission to compare the agreement with that of the documents

received from the petitioner in I.A No.697 of 2011.

6. In view of allowing the application in I.A.No.980 of 2010, the order passed by the court below in dismissing the review application I.A.No.1132 of 2012 dated 30.09.2015 is also set aside and the **CRP PD No.1538 of 2016 is also allowed.**

7. In the result, both the civil revision petitions are allowed. No costs. Consequently, the connected miscellaneous petition is closed.

06.01.2017

vj2

Index: Yes/No

Internet:Yes

To

The Principal Subordinate Judge, Coimbatore

PUSHPA SATHYANARAYANA,J.,

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