

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.2036 and 2037 of 2012

R.K.Selvarajan (deceased)

- 1.Krishna Kumari
- 2.Ishwarya
- 3.Jayanth
- 4.S.Murugavel

.. Petitioners in
both CRPs.

(Petitioners 1 to 4 brought on record as
legal heirs of the deceased sole petitioner
vide order of Court dated 27.09.2016 by TMJ
made in C.R.P.Nos.2036 and 2037 of 2012)

Vs.

1.The Managing Trustee
Sri Aurobindo Ashram Trust
Pondicherry.

2.S.Murugavel

.. Respondents in
both CRPs.

(R2/S.Murugavel shall be shown as fourth petitioner
and not as second respondent vide order of
Court dated 08.03.2017 by PDSJ)

PRAYER: Civil Revision Petitions are filed under Article 227 of the
Constitution of India, against the fair and decretal order dated

10.02.2012 made in I.A.Nos.41 & 44 of 2009 in O.S.No.298 of 2001 on the file of the Principal District Munsif Court, Pondicherry.

In both CRPs.

For Petitioners : Mr.V.Lakshminarayanan

For R1 : Mr.C.A.Diwakar

For R2 : M/S.S.Sugapriya for
Mr.J.Suresh

COMMON ORDER

The Civil Revision Petitions are filed against the fair and decretal order dated 10.02.2012 made in I.A.Nos.41 & 44 of 2009 in O.S.No.298 of 2001 on the file of the Principal District Munsif Court, Pondicherry.

2. The deceased petitioner is the plaintiff and respondents are the defendants in O.S.No.298 of 2001 on the file of the Principal District Munsif Court, Pondicherry. The deceased petitioner filed said suit for declaration to declare the settlement deeds bearing document Nos.5774 to 5778/1999, dated 25.11.1999 and document Nos.292 to 298/2000, dated 27.01.2000, as null and void and non est in the eye of law, as those documents are forged ones

and consequently, to declare the sale deeds bearing document No.6190/1999, dated 20.12.2000 and document No.752/2000, dated 21.02.2000 as null and void. The second respondent filed written statement on 05.10.2011 and is contesting the suit. The deceased petitioner filed two applications in I.A.No.41 of 2009 to reopen the suit to adduce further evidence of deceased petitioner by way of filing additional chief examination as P.W.1 and I.A.No.44 of 2009 for permission to file the documents mentioned in the petition.

3. According to the deceased petitioner, he obtained the documents only at the time of filing petition, from the file of the Chief Judicial Magistrate, Pondicherry. These documents are vital to decide the issue in the suit. The delay in filing these documents is neither wilful nor wanton. If the documents are not received, great prejudice will be caused to the deceased petitioner.

4. The second respondent filed counter affidavit and contended that second respondent filed Crl.O.P.No.2675 of 2011 in this Court, to quash C.C.No.170 of 2005, which was filed against the second respondent. This Court granted interim stay. As per Section 73 of the Indian Evidence Act, the police officer is not an authorised

investigating officer to obtain handwriting or thumb impression by compulsion for any purpose and to use the same against the said person in future. The deceased petitioner can take steps in the suit for obtaining opinion of handwriting expert and the documents in the criminal case cannot be relied on by the deceased petitioner.

5. The learned Judge considering the materials on record, by two separate orders both dated 10.02.2012, dismissed both the applications.

6. Against the said order of dismissal dated 10.02.2012 made in I.A.Nos.41 and 44 of 2009, the present two Civil Revision Petitions are filed by the deceased petitioner/plaintiff.

7. During pendency of the Civil Revision Petitions, plaintiff/petitioner namely, R.K.Selvarajan, died and the petitioners 1 to 4, who are his legal heirs, were brought on record. The second respondent, who is second defendant in the suit, is shown as fourth petitioner in the Civil Revision Petitions, vide order of this Court dated 08.03.2017.

8. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

9. From the materials available on record, it is seen that the deceased petitioner has claimed relief alleging that the signature in the settlement deeds are forged. The deceased petitioner has filed suit in the year 2001 for declaration to declare the settlement deeds dated 25.11.1999 and 27.01.2000 are null and void on the ground that the said documents are forged documents. The deceased petitioner has not taken any steps to obtain opinion of the handwriting expert pending suit. The deceased petitioner is seeking to rely on the documents filed in the criminal case by the police. The documents which the deceased petitioner is seeking to rely is not contemporaneous document and signature obtained is subsequent to filing of the suit. It is well settled that handwriting experts opinion can be obtained only by comparing the disputed signature with the admitted signature in contemporaneous documents within three years of the disputed signature. The Crl.O.P.No.2675 of 2011 filed to quash the proceedings in C.C.No.170 of 2005 was dismissed by this Court.

10. The learned Judge considering the fact that the documents filed by the police in criminal case and Section 73 of the Indian Evidence Act, failure on the part of the deceased petitioner to take steps to obtain opinion from the handwriting expert with regard to forgery alleged by him in the suit and handwriting expert's opinion obtained by the police is subsequent to filing of the suit, which is not contemporaneous signature, dismissed the applications. The learned Judge has given valid reason for dismissing the applications. There is no irregularity or illegality warranting interference by this Court with the orders of the learned Judge dated 10.02.2012.

11. In the result, the Civil Revision Petitions are dismissed. No costs.

Index : Yes/No
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To

The Principal District Munsif, Pondicherry.

13.12.2017

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V.M.VELUMANI, J.

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