

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.3845 of 2012  
& M.P.No.1 of 2012

N.P.Sundaram

.. Petitioner

Vs.

1.P.Radhakrishnan

2.Priyadarshini

3.Indhumathi

.. Respondents

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 07.08.2012, made in I.A.No.368 of 2012 in O.S.No.96 of 2010 on the file of the Subordinate Court, Kallakurichi.

For Petitioner : Mr.R.Raja Ramani

For R1 : Mr.P.Valliappan

For R2 & R3 : given up

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 07.08.2012, made in I.A.No.368 of 2012 in O.S.No.96 of 2010 on the file of the Subordinate Court, Kallakurichi.

2. The petitioner is first defendant, first respondent is plaintiff, respondents 2 and 3 are the defendants 2 and 3 in O.S.No.96 of 2010 on the file of the Subordinate Court, Kallakurichi. The first respondent filed the said suit for a specific performance of agreement of sale dated 06.02.2008. The petitioner has filed written statement on 21.11.2008 and is contesting the suit. The petitioner filed an application in I.A.No.368 of 2012 for sending the Ex.B2, unregistered sale agreement dated 06.02.2008 to handwriting expert to get the opinion. According to the petitioner, on the date of the suit agreement, Ex.A1, another agreement Ex.B2 also was executed and respondents denied his signature and thump impression in unregistered sale agreement, Ex.B2. Therefore, it is necessary to send the document to the handwriting expert to find out, which is genuine document. The petitioner executed the agreement only as a security for loan transaction taken by him and did not intend to sell the property.

3. The first respondent filed counter affidavit and submitted that there was no unregistered sale agreement dated 06.02.2008 between the petitioner and first respondent and first respondent did

not execute Ex.B2. The Ex.A1 is a registered agreement of sale duly attested by witnesses. If really the Ex.B2, unregistered sale agreement was entered into between the parties, then the said agreement of sale must be with the first respondent and not with the petitioner. Only to drag on the proceedings, the petitioner has come out with the present civil revision petition.

4. The learned Judge, considering the averments in the affidavit, counter affidavit and materials on record, and evidence of PW1, dismissed the application, holding that the petitioner did not confront the respondent with Ex.B2 during cross examination and petitioner has not explained as to how he is in possession of the said agreement of sale in stead of with the respondents.

5. Against the said order of dismissal dated 07.08.2012, made in I.A.No.368 of 2012 in O.S.No.96 of 2010, the present civil revision petition is filed by the petitioner.

6. Heard the learned counsels appearing for the petitioner and first respondent and perused the materials available on record.

7. According to the petitioner, on 06.02.2008, two agreements of sale were executed and registered for Rs.8,50,000/-, while another unregistered sale agreement is for Rs.17,00,000/-. The respondent has denied the signature and thump impression and execution of Ex.B2 and therefore, it must be sent to the Handwriting expert to get opinion. This contention is without merits. When the respondents gave evidence, the petitioner did not put question in the cross examination with regard to the Ex.B2. Even though the petitioner mentioned Ex.B2, unregistered sale agreement in the written statement, he did not show the same to the first respondent and did not put any question to the first respondent in the cross examination. The document was marked during chief examination of DW1. Consequently the document was produced by the petitioner and he has not explained as to why the said document was given to him or the said document is in his possession, when it must be in the possession of the first respondent. The petitioner can prove the execution of unregistered sale agreement by examining the independent witnesses about the said document and to prove his contention that first respondent only executed the unregistered sale agreement on the same day.

8. The learned Judge has considered all these facts and by giving cogent and valid reason, dismissed the application. Therefore, there is no illegality or irregularity warranting interference with the order of the learned Trial Judge dated 07.08.2012.

9. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18.08.2017

Index: Yes/No  
gsa

To

The Subordinate Judge,  
Kallakurichi.

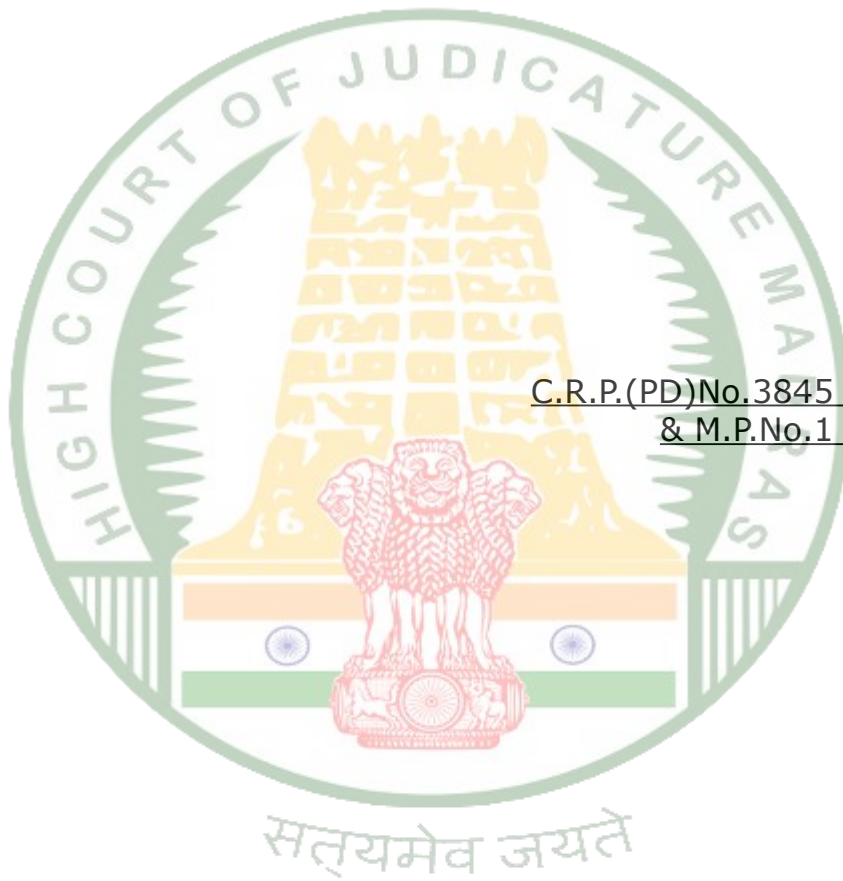


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**V.M.VELUMANI, J.**

gsa



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