

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.842 of 2013
and
M.P.No.1 of 2013**

R.Thangavel

.. Petitioner

Vs.

1.S.Kandasamy

2.M.Senthamilselvi

3.Sellammal

4.S.Murugesan

5.Palanivel

6.S.S.Ramasamy

7.R.Karthikeyan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 01.02.2013 made in I.A.No.908 of 2011 in O.S.No.134 of 2011, on the file of the Sub Court, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondents : M/s.Sithirai Anandan
Mr.G.Prabhukannan

ORDER

The plaintiff in O.S.No.134 of 2011 on the file of the Sub-Court, Tiruchengode is the petitioner herein. The suit is filed by the plaintiff against the respondents herein for specific performance.

2.The revision is filed by the plaintiff as against the order made in I.A.No.908 of 2011 dated 01.02.2013 allowing the application to appoint an Advocate Commissioner to take the disputed signatures contain in the suit sale agreement along with the admitted signatures and produce the same to the handwriting expert for comparing and after comparison get a report and to file it into the court.

3.The 4th defendant in the suit has filed an application in I.A.No.908 of 2011 seeking to compare his signatures in the suit sale agreement dated 15.08.2008 along with his admitted signature. It is his case that in the suit sale agreement the plaintiff has forged his signatures and filed the above vexatious suit. The 4th defendant used

to sign only in English and he never sign in Tamil in any document at any point of time. The alleged signatures in the sale agreement dated 15.08.2008 are not that of him. On that premise, the 4th defendant sought to appoint an Advocate Commissioner for taking the alleged original agreement dated 15.08.2008 along with his admitted signature for getting expert opinion from the expert in Forensic Department and also to file report into the court.

4.The said application was resisted by the plaintiff by filing counter affidavit. The plaintiff has contended that it is false to state that the 4th defendant usually sign only in English. In fact, the suit in O.S.No.91 of 2009 on the file of the very same Sub-Court, Tiruchengode was filed by the 4th defendant in the present suit and others against one Palani Gounder and others for partition and separate position. In that suit in the Plaint and Vakalat, the 4th defendant has signed only in Tamil. Therefore the averment of the 4th defendant to the effect that he used to sign only in English is totally utter false and it is only with a sole aim of cheating the plaintiff and also to drag on the proceedings.

5.The trial court after careful consideration of the case of the 4th defendant and the plaintiff, has allowed the application filed under section 45 of the Indian Evidence Act by order and decree dated 01.01.2013. Against which the plaintiff has prepared the present Civil Revision Petition.

6.I heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.S.Sithirai Anandan, learned counsel appearing for the respondents and carefully perused the entire materials available on record.

7.According to the plaintiff, the sale agreement was entered into between the plaintiff and the defendants on 15.08.2008 and the plaintiff has paid an advances amount of Rs.2,50,000/- out of the total sale consideration of Rs.10,00,000/-. Since the defendants failed to perform their part of contract, the plaintiff has filed the suit in O.S.No:134 of 2011 for Specific Performance.

8.Pending suit, the 4th defendant has took out an application in I.A.No:908 of 2011 for comparison of his signatures in the suit sale agreement along with his admitted signature on the ground that the

plaintiff has forged his signatures. The 4th defendant never signed in the suit sale agreement dated 15.08.2008. It is his further case that he used to sign only in English and not in Tamil.

9.Per contra, the Learned Counsel for the petitioner submitted that in the earlier suit filed by the 4th defendant and others in O.S.No:91 of 2009, the 4th defendant signed his name only in Tamil. Therefore the contention of the 4th defendant is false to the effect that he never signed in Tamil.

10.In my considered opinion, when a dispute is arosed with regard to the signature of the parties in the case of Specific Performance or in the case of Promissory Note, in order to ascertain the genuineness of the signatures of the parties, it is safe to compare the disputed signatures along with the admitted signature of the parties as contemplated under Section 45 of the Indian Evidence Act, 1872.

11.Section 45 of the Evidence Act reads as follows:

“45.Opinion of experts. - When the Court
has to form an opinion upon a point of foreign

law, or of science or art, or as to identify of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts.

Such persons are called experts.”

12. In the present case also, the trial court in order to give a quietest to the issue involved in the suit, has rightly ordered for comparison of the disputed signatures of the 4th defendant in the suit sale agreement along with his admitted signature to the Forensic Department. The trial court need not go into the issue relating to whether the 4th defendant would sign in Tamil or English? and it is for the plaintiff to establish the same by marking relevant documents to establish his case. Therefore I am of the view that there is nothing wrong in the order of the trial court. Therefore the contention raised on the side of the plaintiff deserves no merit. Hence, this Court does not find any irregularity or illegality in the said order, warranting interference by this Court.

13.In the result:

(a) this civil revision petition is dismissed by confirming the order in I.A.No.908 of 2011 in O.S.No.134 of 2011, dated 01.02.2013, on the file of the Sub-Court, Tiruchengode;

(b) the learned Subordinate Judge, Tiruchengode is hereby directed to issue suitable direction to the Advocate Commissioner to take the disputed suit sale agreement along with the admitted signature and produce the same to the handwriting expert, Tamil Nadu Forensic Science Department, Chennai for comparison and after comparison, get a report and file before the Court within a period of 15 days;

(c) on filing the report, the trial Court is directed to dispose of the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

10.03.2017

Index:Yes
Internet:Yes
vs

To
The Sub Court, Tiruchengode.

M.V.MURALIDARAN, J.

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