



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.01.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.51 to 54 of 2017 (PD)

and

C.M.P(MD)No.194 of 2017

M.Mayakkal

.. Petitioner/ Petitioner/Plaintiff
in all the CRPs

Vs.

K.Kumar (died)

1.Selvi @ Selvamathi

2.K.Krishnakumar

3.K.Kameswari

4.Kalyanamangai

..Respondents 1 to 4/ Respondents 2 to 5/
Defendants 2 to 5 in all the CRPs

PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to aside the Fair and Decreetal order made in I.A.Nos. 210, 211, 235, 236 of 2016 in O.S.No. 137 of 2011 on the file of the I Additional District Court, Madurai, dated 16.09.2016 and allow the revisions.

For Petitioner : Mr. M.V.Venkataseshan

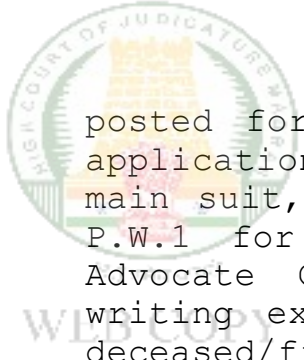
For Respondents : No Appearance

COMMON ORDER

The issues involved in all the CRPs are interlinked and hence, all the CRPs are disposed of by common order.

2.The petitioner has filed these Civil Revision Petitions to aside the Fair and Decreetal order made in I.A.Nos. 210, 211, 235, 236 of 2016 in O.S.No. 137 of 2011 passed by the I Additional District Court, Madurai, dated 16.09.2016 and allow the revisions.

3.The petitioner in all the C.R.Ps., is plaintiff. He filed suit in O.S.No.124 of 2001 on the file of the III Additional Sub Court, Madurai in the year 2001 and subsequently, it was transferred to I Additional District Court, Madurai for want of pecuniary jurisdiction and re-numbered as O.S.No.137 of 2011. She filed suit for specific performance of agreement against the first defendant. The first defendant filed written statement and contested the suit. Subsequently he died. The respondents 2 to 5 are defendants in the suit. Trial commenced in the year 2010. The petitioner completed her evidence on 05.08.2014 and respondents completed their evidence on 29.03.2016. The suit was



posted for arguments. At that stage, the petitioner filed four applications in I.A.Nos.210,211,235 and 236 of 2016 to re-open the main suit, to receive the additional documents and to recall the P.W.1 for marking of additional documents and to appoint an Advocate Commissioner to send the documents before the hand writing expert for comparison of the disputed signature of the deceased/first defendant with admitted signature and to file expert opinion along with his report. The petitioner wanted to mark certain documents through D.W.1/third defendant in the suit and the said witness did not admit the document and therefore the document could not be marked. In the said circumstances, the petitioner has filed four applications so that those documents could be marked through P.W.1. According to petitioner, these documents are vital to prove her case. The first defendant in the written statement filed by him denied the contents in the sale agreement and submitted that he signed in the blank papers and the same is utilised for agreement of sale. The respondents are denying the signature of the first respondent in the agreement of sale. In the circumstances, it is necessary to send the documents for comparison of the disputed signature with the admitted signature of first defendant in the documents.

4.The respondents filed counter affidavit and submitted that the petitioner has not given any reason for not filing these documents earlier and marking the documents through P.W.1. The first defendant himself has denied his signature in the agreement of sale. The petitioner did not take any steps to get the opinion of hand writing expert immediately. The suit is of the year 2001 and when the suit is posted for arguments, the petitioner has come out with four applications only to drag-on the proceedings and prayed for dismissal of the applications.

5.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed all the four applications holding that the petitioner has not explained for not filing the documents at the earliest and marking through her witness. As far as the application to get the opinion from hand writing expert with regard to signature in the agreement of sale, the learned Judge dismissed the application holding that the expert opinion is not conclusive and court can compare the disputed signature with admitted signature and give a finding.

6.Against the said order of dismissal, the petitioner has come out with these four Civil Revision Petitions.

7.The learned counsel for the petitioner submitted that the learned Judge is not correct in dismissing the applications on the ground of delay. The learned Judge failed to see that the D.W.1/third defendant did not admit the document and evidence was concluded only on 29.03.2016 and petitioner filed application on 07.04.2016. The learned counsel for the petitioner further submitted that the opinion of the hand writing expert will assist in deciding the issue as to whether the signature in the agreement of sale is genuine and is that of first defendant.

8.Mr.S.Maheshbabu, learned counsel filed caveat for all the

respondents and there is no representation.

9.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

10.The petitioner filed suit in O.S.No.124 of 2001 on the file of the III Additional Sub Court, Madurai. Trial commenced in the year 2010 and petitioner let in evidence in the year 2010. Subsequently, it was transferred to I Additional District Court, Madurai and re-numbered as O.S.No.137 of 2011 for want of pecuniary jurisdiction to I Additional District Court, Madurai and completed her evidence on 05.08.2014. The petitioner in the application for re-opening has not explained as to why she has not filed the documents earlier and marked through her witness. The learned Judge has taken note of the fact, the petition documents sought to be marked are of the year 1994, 2007, 2013, 2014 and 2016 Two documents are after filing of suit and no reason was given for not filing earlier. As far as the application for appointment of Advocate Commissioner to get expert opinion, the learned Judge has held that the Court has ample power to compare the disputed signature with admitted signature and can come to the conclusion as per the genuineness of the disputed signature. The learned Judge has considered the judgment relied on by the counsel for the petitioner and came to the correct conclusion that the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. The learned Judge has properly appreciated the facts and dismissed all the applications by giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court.

11.In the result, all the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To

The I Additional District Court,
Madurai.

+1 cc to MR.S.Mahesh Babu, ADVOCATE, SR NO:2731

+1CC to M.V.Venkataseshan, Advocate Sr.No.2250

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