



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.1534 of 2016 (PD)
and
C.M.P. (MD) No.7465 of 2016

V.Sowmiya Narayanan

.. Petitioner/1st Respondent/1st
Defendant

Vs.

1.Velachi Reddiar, S/o.Sannappa Reddiar

1st Respondent/Petitioner/Plaintiff

2.Geetha, W/o.Ramasamy

..2nd Respondent/2nd Respondent/2nd
defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 25.02.2016, made in I.A.No.39 of 2015 in O.S.No.18 of 2010 on the file of the Additional District Court, Pudukottai.

For Petitioner

: Mr.P.Arun Jayatram

For R1

: Mr.G.Sridharan

For R2

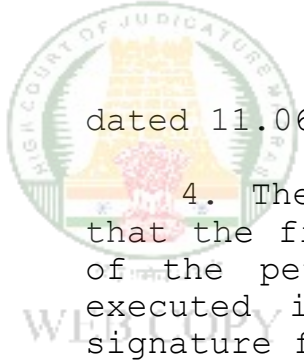
: No Appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 25.02.2016, made in I.A.No.39 of 2015 in O.S.No.18 of 2010 on the file of the Additional District Court, Pudukottai.

2. The revision petitioner is the first defendant in the suit in O.S.No.18 of 2010 on the file of the Additional District Court, Pudukottai. The first respondent, who is the plaintiff in the suit, has filed the said suit for specific performance of the agreement of sale, dated 11.06.2008.

3. The revision petitioner filed a written statement on 31.08.2009 disputing the signature in the agreement of sale, dated 11.06.2008 and filed I.A.No.22 of 2010 to send the admitted signature of the petitioner and the disputed signature found in the agreement of sale to be sent to Forensic Laboratory to compare and certify the genuineness of the signature in the agreement of sale,



dated 11.06.2008.

4. The first respondent filed a counter affidavit and stated that the first respondent has no objection to compare the signature of the petitioner in the registered sale deed dated 20.05.2009 executed in favour of the second respondent with the disputed signature found in the agreement of sale, dated 11.06.2008.

5. The said I.A.No.22 of 2010 was ordered by the learned Additional District Judge/Fast Track Court, Pudukottai. As per the order of the Trial Court, the signature of the petitioner was sent to the Deputy Director, Regional Forensic Science Laboratory, Madurai, for comparison of signature.

6. The Deputy Director, Regional Forensic Science Laboratory, Collector's Office Road, Madurai, by his proceedings, dated 27.09.2011, sent a report stating that the signatures differ.

7. The learned counsel appearing for the petitioner submitted that the first respondent/plaintiff filed I.A.No.48 of 2013 to issue a commission to Smt.C.V.Jayadevi, private finger print expert, directing her to inspect the documents examined by the earlier handwriting expert in I.A.No.22 of 2010 and the notice for I.A.No.102 of 2009, dated 29.07.2009 served on the respondent on 06.08.2009, in the presence of the Chief Ministerial Officer of the Court, to examine, analyse and compare the signatures and file her report thereon. The petitioner herein filed a counter affidavit opposing the said application.

8. The Additional District Judge, Pudukkottai, by an order, dated 30.08.2013, considering the averments made in the affidavit filed in support of the petition and counter affidavit, allowed the application and appointed Smt.C.V.Jayadevi, Private Handwriting expert, to inspect the documents examined by the earlier expert and also served notice in I.A.No.102 of 2009 in the presence of the Chief Ministerial Officer of this Court and to submit her report by 13.09.2013. Against the said order, dated 30.08.2013, the petitioner filed a petition before this Court in C.R.P.(MD)No.741 of 2015.

9. When the Civil Revision Petition was taken up for hearing, the learned counsel for the first respondent submitted that the first respondent is withdrawing the application in I.A.No.48 of 2013 with liberty to file an application in I.A.No.22 of 2010, to direct the Deputy Director, Regional Forensic Science Laboratory, Madurai, to compare the disputed signatures in the agreement of sale, dated 11.06.2008 with the contemporaneous admitted signature. In view of the submission made by the learned counsel for the first respondent, this Court set aside the order, dated 30.08.2013 made in I.A.No.48 of 2013 and dismissed I.A.No.48 of 2013 as not pressed and permitted the petitioner to file appropriate application in I.A.No.22 of 2010 to send contemporaneous document to the Deputy Director, Regional



Forensic Laboratory, Madurai, for examination, provided, the petitioner produces the contemporaneous document.

10. After disposal of the Civil Revision Petition, the first respondent filed I.A.No.39 of 2015 on the file of the Additional District Court, Pudukkottai, to direct the second respondent/second defendant to produce the original sale deed, dated 20.05.2009 executed by the first respondent/first defendant in favour of the second defendant in respect of the suit property. The petitioner filed counter affidavit opposing the said application and stated that the present application to compare the signature of the first respondent found in the sale deed, dated 20.05.2009, is only an after-thought and it is not a contemporaneous signature of the first respondent.

11. Considering the averments made in the affidavit and counter affidavit, the learned Additional District Judge, Pudukkottai, allowed the application directing the second respondent to produce the document, dated 20.05.2009, before the Court, so as to enable the Court to compare with the disputed signature and to effectively decide the issue in the suit.

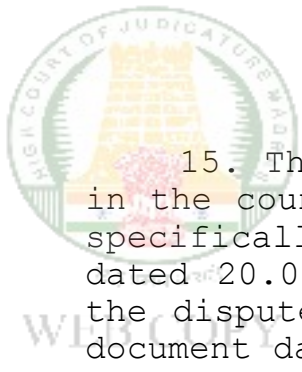
12. Against the order, dated 25.02.2016, the petitioner has come up with the present Civil Revision Petition.

13. The learned counsel for the petitioner submitted that the petitioner filed I.A.No.22 of 2010 for comparing the disputed signature in the agreement of sale, dated 11.06.2008 with the admitted signature in the document dated 24.03.2008 signed before the Subordinate Court, Madurai. The first respondent filed I.A.No.39 of 2015 for a direction to the second respondent to produce the sale deed, dated 20.05.2009, for comparing the signature of the petitioner in the document executed in favour of the second respondent. The learned Additional District Judge, Pudukkottai, failed to see the document, dated 24.03.2008, is more contemporaneous document, then the sale deed dated 20.05.2009. This Court, vide order dated 28.04.2015, in C.R.P.(MD)No.741 of 2015 observed that the contemporaneous admitted signature of the petitioner can be sent for comparison with the disputed signature.

14. In support of his submissions, the learned counsel for the petitioner relied on the following judgments:

(i) **Veppanathar @ Karuppannan and another Vs. Kaliappan [2000 (1) LW 893]**, wherein it has been held that the impugned order is without jurisdiction and liable to be set aside, as the lower Court has not recorded reasons and a party has a right to know why the report is not accepted.

(ii) **Padmanabhan Vs. Krishnamurthy [2005 (3) CTC 619]**, wherein it has been held that the second commissioner can be appointed for same purpose and report of first commissioner can be set aside, provided, the finding regarding dissatisfaction is recorded by the Court.

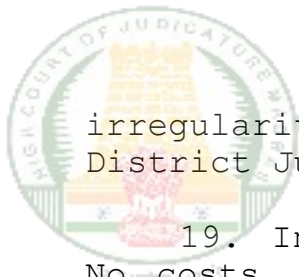


15. The learned counsel for the first respondent submitted that in the counter filed in I.A.No.22 of 2010, the first respondent has specifically stated that the admitted signature in the sale deed, dated 20.05.2009 can be sent for comparison with the signature in the disputed signature in the agreement of sale. Instead of that, document dated 24.03.2008 only was sent for comparison. This Court, in the order dated 28.04.2015, made in C.R.P.(MD)No.741 of 2015 observed that contemporaneous admitted signature of the petitioner can be sent for comparison. The admitted signature in the sale deed, dated 20.05.2009, is a contemporaneous document and therefore, there is no error in the order of the learned Additional District Judge directing the second respondent to produce the sale deed dated 20.05.2009. The contention of the learned counsel for the petitioner that the sale deed dated 20.05.2009 is not contemporaneous document, is not correct. There is no error in the order passed by the learned Additional District Judge, in I.A.No.39 of 2015.

16. Though notice was served on the second respondent and her name is printed in the cause list, she has not chosen to appear either in person or through counsel.

17. I have heard the learned counsel appearing for the parties and carefully perused the materials available on record.

18. In the suit in O.S.No.18 of 2010 filed by the first respondent, the petitioner has filed written statement and disputed his signature in the agreement of sale. He filed I.A.No.22 of 2010 for sending the disputed signature in the agreement of sale, dated 11.06.2008 for comparison with admitted signature. The first respondent has specifically took a plea that admitted signature in the sale deed, dated 20.05.2009, may be sent for comparison. The said document was not sent, but only the document, dated 24.03.2008 was sent for comparison. Therefore, he took further proceedings for second opinion and subsequently, in the Civil Revision Petition before this Court filed by the petitioner, he withdrew the second application with liberty to file application in I.A.No.22 of 2010. The first respondent filed I.A.No.39 of 2015 for a direction to the second respondent to produce the sale deed dated 20.05.2009. The said application was ordered. The contention of the learned counsel for the petitioner that the learned Additional District Judge erred in allowing the application, as he failed to see that the said document is not contemporaneous document and the contemporaneous document dated 24.03.2008 was sent for comparison, is not tenable. From the beginning, the first respondent is claiming to send the sale deed dated 20.05.2009 for comparison. The sale deed was executed by the petitioner after 11 months of agreement of sale. Therefore, it is contemporaneous document and it can be sent for comparison with the disputed signature. In the circumstances, the judgments relied on by the learned counsel for the petitioner are not applicable to the facts of the present case. There is no



irregularity or illegality in the order of the learned Additional District Judge warranting interference by this Court.

19. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Additional District Judge,
Pudukottai.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. P.ARUN JAYATRAM, ADVOCATE, SR NO.2693

+1 cc to Mr. G.SRIDHARAN, ADVOCATE, SR NO.2349

smn2

MAS/SV-MMS:31.01.2017:5P/5C

Order in
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