

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

CIVIL REVISION PETITION (PD) Nos.27 and 28 of 2017
and
C.M.P.Nos.184 of 2017 and 3632 of 2018

Jayanthi

.. Petitioner
in both the petitions

vs

Saravanan

.. Respondent
in both the petitions

The Civil Revision Petitions have been filed under Article 227 of the Constitution of India to set aside the fair order and decretal orders dated 26.10.2016 passed in I.A.Nos.35 and 36 of 2016 in O.S.No.43 of 2010 on the file of the learned District Judge, Thiruvannamalai.

For Petitioner ... Mr.S.Y.Masood

For Respondent ... Mr.S.Sathish Rajan

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair order and decretal orders dated 26.10.2016 passed in I.A.Nos.35 and 36 of 2016 in O.S.No.43 of 2010 on the file of the learned District Judge, Thiruvannamalai.

2. According to the petitioner/defendant, the respondent/plaintiff filed a suit in O.S.No.43 of 2010 against the petitioner for specific performance. At the stage of arguments, the petitioner filed an application in I.A.No.35 of 2016 under Section 151 CPC to re-open the suit and filed another application in I.A.No.36 of 2016 under Section 75(e) r/w Order 26 Rule 9A and 151 of CPC to appoint an Advocate Commissioner. The Court below dismissed I.A.No.35 of 2016, by order dated 26.10.2016, on the ground that the said I.A. has been filed belatedly at the stage of arguments and also dismissed I.A.No.36 of 2016 in view of the dismissal order passed in I.A.No.35 of 2016.

3. The learned counsel for the petitioner submitted that the respondent filed the suit for specific performance based on the sale agreement dated 03.07.2009, Ex.A.1 and the petitioner has to prove that the signature found in the said sale agreement Ex.A.1. is not genuine and the same is fabricated. Hence, the petitioner has filed I.A.No.35 of 2016 to appoint an Advocate Commissioner and to send the alleged sale agreement dated 03.07.2009 to scientific investigation along with comparison of specimen signature found in vakalat and I.A.No.36 of 2016. The Court below, without considering the facts of

the case, erroneously dismissed both the applications. The learned counsel further submitted that, if those applications have been allowed, no prejudice would have been caused to the respondent and therefore, the impugned orders passed by the Court below are liable to be set aside.

4. The learned counsel for the respondent submitted that the petitioner has filed the applications at the belated stage, that too, after evidence of both sides was concluded and the suit is posted for arguments. Therefore, the Court below rightly dismissed the applications and hence, the Civil Revision Petitions have no merit and the same are liable to be dismissed.

5. This Court considered the submissions made by the learned counsel for both sides and perused the materials available on record.

6. On an earlier occasion, this Court in the case of ***P. Stanley Buck Vs. D. Govindaraj reported in (2009) 7 MLJ 908*** held as follows:

"26. In ***Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4)***

SCC 530: (2008) 2 MLJ 1115, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the Supreme Court held thus at p.1124 of MLJ:-

"17. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale

in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses...."

27. In **P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005) 2 MLJ 603: (2005) 3 CTC 12**, Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert."

7. Further, in the case of **Ram Rati vs. Mange Ram (D) through L.R.s and others [2016 (11) SCC 296]**, the Hon'ble Supreme Court held as follows:

"11.The respondent filed the application under Rule 17 read with Section 151 CPC invoking the inherent powers of the Court to make orders for the ends of justice or to prevent abuse of the process of the court. The basic purpose of Rule 17 is to enable the Court to clarify any position or doubt, and the Court may, either suo motu or on the request of any party, recall any witness at any stage in that regard. This power can be exercised at any stage of the suit. No doubt, once the court recalls the witness for the purpose of any such clarification, the Court may permit the parties to assist the Court by examining the witness for the purpose of clarification required or permitted by the Court. The power under Rule 17 cannot be stretched any further. The said power cannot be invoked to fill up omission in the evidence already led by a witness. It cannot also be used for the purpose of filling up a lacuna in the evidence. "No prejudice is caused to either party" is also not a permissible ground to invoke Rule 17. No doubt, it is a discretionary power of the Court but to be used only sparingly, and in case, the Court decides to invoke the provision, it should also see that the trial is not unnecessarily protracted on that ground."

8. On a perusal of the records, it is seen that the respondent filed a suit for specific performance on the basis of the sale agreement dated 03.07.2009, Ex.A.1, wherein, the petitioner filed applications to disprove that the document under Ex.A.1 are not true and genuine. In the light of the decisions cited supra, the burden is on the part of the respondent/plaintiff to prove the genuineness of the sale agreement. Therefore, this Court is not inclined to entertain the Civil Revision Petitions.

9. In view of the facts and circumstances of the case and in the light of the aforesaid judgment, the impugned orders passed by the Court below are sustainable and does not warrant interference of this Court. Hence, the Civil Revision Petitions are liable to be dismissed.

In the result, the Civil Revision Petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

02.03.2018

Speaking/Non Speaking order.
Index: Yes/No.
cla

D.KRISHNAKUMAR,J.
cla

To

The District Judge,
Thiruvannamalai.



C.R.P.(PD)Nos.27 and 28 of 2017

WEB COPY

Date: 02.03.2018