

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

CRP.(PD).No.3504 of 2017

1.E.Nagarajan

2.N.Dhanalakshmi

..Petitioners

Vs.

A.Anandhan

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 26.07.2017 passed by the Hon'ble IV Additional District Judge, Thiruvallur @ Ponneri in I.A.No.74/16 in O.S.No.115/11.

For petitioners : Ms.S.Rajeni Ramadass

For respondent : Mr.N.Rajan

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ORDER

Heard Ms.S.Rajeni Ramadass, learned counsel for the petitioners and Mr.N.Rajan, learned counsel appearing for the respondent.

2. The petitioners have approached this Court, seeking the following relief,

“To set aside the Fair and Decreetal order dated 26.07.2017 passed by the Hon'ble IV Additional District Judge, Thiruvallur @ Ponneri in I.A.No.74/16 in O.S.No.115/11”

3. The case of the petitioners is as follows:-

The respondent filed a suit in O.S.No.115 of 2011 for a specific performance against the petitioners herein. The aforesaid suit was posted for trial and the plaintiff side evidence was examined. At that time, the petitioners have filed the interlocutory application under Order XXVI Rule 10(A) of CPC, to appoint an Advocate Commissioner to carry out the process of reference of the Agreement for sale dated 16.10.2008 to the Hand Writing Expert and submit the report of the same. At this stage, the Court below has erroneously dismissed the above said application. Therefore, the petitioners have filed the present Civil Revision Petition, before this Court.

4. According to the learned counsel for the petitioners, the respondent had falsely alleged in the plaint that he had paid a sum of Rs.2,00,000/- to the first petitioner, other than Rs.5,00,000/- towards part of sale consideration on 06.01.2009 and to that effect, the first petitioner and his wife, the second petitioner, made an endorsement in the sale agreement dated 16.10.2008, in the presence of witnesses. The petitioners have denied the execution of the sale agreement that the respondent/plaintiff had forged the signature of the petitioners 1 and 2 in the back side of the sale agreement and the witnesses to the agreement for sale have given false evidence against the petitioners by alleging that the petitioners have made an endorsement in their presence in the back side of page 1 of the said document. Therefore, the above said application has been filed.

5. Per contra, learned counsel appearing for the respondent would submit that the aforesaid suit was filed in the year 2011. When the case was posted for evidence of the plaintiff side, the petitioners/defendants have filed the written statement on 27.05.2012. In the aforesaid statement, the petitioners have not raised the said defence. After the trial was commenced, in order to prolong the case, the petitioners have filed the

above said Interlocutory Application. Further, the respondent has filed a suit for specific performance and the burden lies on the plaintiff to prove the case. Therefore, the Court below has rightly dismissed the said application.

6. By considering the facts and circumstances of the case and perusing the order passed by the Court below, the scope of the Civil Revision Petition is very narrow, when the petitioners being defendants in the suit, the Interlocutory application for the prayer to send the agreement for sale deed dated 16.10.2008 to the handwriting expert to ascertain the signature found on the back side of page 1 of the Ex.A.1 with that of the signatures found on the other page of Ex.A.1, cannot be entertained.

7. When the petitioners have raised the specific plea in the written statement, it is a burden on the respondent/plaintiff to prove the execution of the document. Therefore, it is for the plaintiff to take steps to ascertain the genuineness of the signature. In an earlier occasion, this Court has already considered and decided in the case of ***P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908***, paragraph Nos.26, 27 and 30 of which are extracted below:-

“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.

30. In **State (Delhi Administration) v. Pali Ram., AIR 1979 SC 14**, the Supreme Court opined that it would be permissible for the Trial Court to send the disputed document for expert opinion even without an application. The relevant paragraph would read thus :-

"Even where no such expert witness is cited or examined by either party, the court may, if it thinks necessary for the ends of justice, on its own motion, call an expert witness, allow him to compare the sample writing with the alleged

writing and thus give his expert assistance to enable the court to compare the two writings and arrive at a proper conclusion."

8. In view of the aforesaid facts and the decision cited supra, there is no warrant to interfere with the order passed by the Court below.

9. In the result, **the Civil Revision Petition is dismissed. No costs.**

08.01.2018

Speaking / Non Speaking order

Index :Yes/No

Internet :Yes/No

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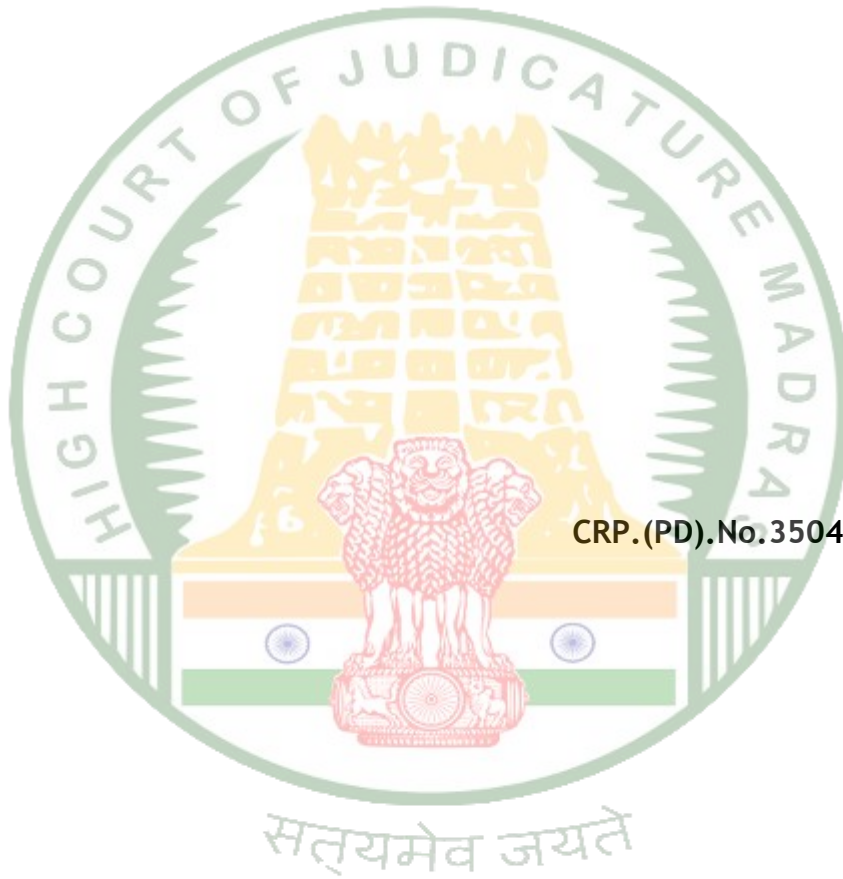
To

The learned IV Additional District Judge,
Ponneri,
Thiruvallur District.

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D.KRISHNAKUMAR.J,

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