

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP(PD) No. 4115 of 2017
and
CMP.No.19299 of 2017

V.Ramakrishnan

.. Petitioner

Vs

1.T.P.Gopinath
2.Mrs.Pushpa Gopinath
3.E.Kumar
4.C.Gopal
5.Meenakshi
6.Vinodh

.. Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and Decretal order passed in IA SR No.38239 of 2017 in O.S.No.2068 of 2013 dated 25.07.2017 by the Learned IV Assistant Judge, City Civil Court, Chennai.

For Petitioner

:Mr.T.S.Rajamohan

For R1 & R2

:Mr.M.J.Jaseem Mohammed

ORDER

This Civil Revision Petition is filed against the order passed in IA SR No.38239 of 2017 in O.S.No.2068 of 2013 dated 25.07.2017 passed by the learned IV Assistant Judge, City Civil Court, Chennai.

2. The learned counsel for the petitioner submitted that the 1nd & 2nd respondents herein have filed the suit in O.S. No.2068 of 2018 for permanent injunction restraining the petitioner/ 1st defendant from alienating the schedule mentioned property. It is the case of the 1st and 2nd respondents/ plaintiffs that an agreement of sale dated 29.08.2007 was executed between them and the petitioner, where upon payments were made to the petitioner/ 1st defendant. According to the 1st and 2nd respondents/ plaintiffs, the other defendants repaid a sum of Rs.10,000/-. Alleging that the petitioner/ 1st defendant attempted to sell the suit schedule property, the 1st and 2nd respondents/ plaintiffs filed the aforesaid suit. The petitioner has filed his written statement and an additional written statement in the said suit.

3. In the aforesaid suit, the petitioner also filed an application in I.A. No.4410 of 2016 and the Court below by its order dated 05.08.2016 directed the Deputy Director, Forensic Sciences Department to examine the documents and forward the report. The Assistant Director/ Document Expert forwarded the report dated 24.03.2017, by stating that it is not possible to offer any reliable opinion based on the documents that were forwarded, for offering opinion. Therefore, the said application was closed. Pursuant to that, the revision petitioner filed an application in I.A. SR No.38239 of 2017 in O.S. No.2068 of 2013, invoking provision under Section 45 of Evidence Act and Section 151 of Code of Civil Procedure, seeking to refer the plaint document No.2 Agreement for sale along with the endorsement found on the reverse page No.1 of plaint document to the highest authority in Forensic Science Department for scientific testing. The aforesaid application was rejected on the ground that sending the documents to the Forensic Department would cause further delay in proceeding with the case. Challenging the aforesaid order, the present Civil Revision Petition has been filed by the petitioner before this Court.

4. The learned counsel for the petitioner would submit that the petitioner has filed the instant application, to refer the plaint document No.2 Agreement of Sale in original and the alleged endorsement on the reverse page of Sale agreement, by forwarding the same to the highest authority in Forensic Department, to examine the alleged manipulation and fabrication of the signature and submit a report before the Court below. If the said application is allowed, no prejudice would be caused to the 1st and 2nd respondents/ plaintiffs. Without considering the submission of the petitioner, the Court below has erroneously rejected the application. Therefore, the order passed by the Court below is liable to be set aside.

5. The learned counsel for the 1st respondent would submit that it is an admitted fact that the 1st and 2nd respondents/ plaintiffs filed the suit for permanent injunction, against the petitioner/1st defendant. The present application has been filed for comparison of the signature of the petitioner. The said application is not at all maintainable, in the present suit. The relief can be decided on the basis of the oral and documentary

evidence produced before the Court below, during the trial. Therefore, the Court below has rightly dismissed the said application.

6. Considered the submissions made by both the parties and perused the material available on record.

7. It is an undisputed fact that the 1st and 2nd respondents/ plaintiffs have filed the suit for permanent injunction. The instant application has been filed for comparison of signature along with disputed endorsement made on the reverse page of the sale agreement could be decided if the other relief as prayed for by the respondent, but not the relief as prayed for in the injunction suit. The present relief as prayed for in the suit shall be decided by relying upon the oral and documentary evidence adduced by both parties to prove the case. Further, on merit also the Court below has considered that the suit has been filed in the year 2013 and also by relying upon the earlier report submitted by Assistant Director. Therefore, the present application filed by the petitioner would amount to delay the proceedings in the suit. It is open to the parties concerned to seek remedy under law before the Court below at later stage.

D. KRISHNAKUMAR J.,

RKP

8. Therefore, the Civil Revision petition fails and the same is dismissed. It is open to the petitioner can file appropriate application, if necessary. On instructions, the learned counsel for both the parties undertake to co-operate for early disposal of the suit. The trial court is directed to dispose of the suit, as expeditiously as possible. Consequently, connected miscellaneous petition is closed. No costs.

09.01.2018

Index: Yes/ No
Internet: Yes/No
Speaking Order/Non Speaking Order
RKP

To

The IV Assistant Judge,
City Civil Court,
Chennai.

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