

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.04.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

**CRP(PD).Nos.5215, 5216, 5217, 5218 of 2011
& 3842 of 2016**

and M.P.No.1 of 2011 in CRP.No.5215 of 2011

Mrs. P. V. Rukmini Devadas ...Petitioner in all the CRPs

Versus

P.V.Sasidharan ...Respondent in all the CRPs

Prayer in all the CRPs: These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decreetal order made in I.A.Nos.419, 418, 597, 598 & 596 of 2011 respectively in O.S.No.110 of 2004 on the file of Subordinate Judge, Poonamallee dated 02.08.2011.

For Petitioner
in all the CRPs : Mr.A.C.Kumaragurubaran

For Respondent
in all the CRPs : Mr.N.Ramakrishnan
for Waraon & Sairams

COMMON ORDER

1.1. A batch of Revision Petitions have been filed by the plaintiff in O.S.No.110 of 2004 on the file of the Sub Court, Poonamallee. The brief facts that are essential for appreciating the merit of the petitions may be stated as below:

The petitioner is the sister-in-law of the respondent. The latter, to be precise, is her husband's younger brother. According to the petitioner, at the relevant time, the respondent was a minor and the petitioner's husband and respondent were living together. Both the petitioner as well as the respondent had applied for allotment of a flat in the Housing Board, but only the petitioner was successful in obtaining an allotment. Times rolled by when respondent began to assert right over the property allotted in the name of the petitioner. In this circumstance, when the respondent apprehended a threat of dispossession of the said flat by the petitioner and her husband (brother of the respondent), he moved the District Munsif Court, Ambattur in O.S.No.350 of 2002 for a decree of prohibitory injunction with a view to secure his peaceful possession and enjoyment of the property. This was followed by the petitioner herein approaching the Sub Court, Poonamallee with O.S.No.110 of 2004 for recovery of possession against the respondent.

1.2. Subsequently, the suit in O.S.No.350 of 2002, which the respondent had filed was transferred and clubbed with O.S.No.110 of 2004. On transfer, the said case was renumbered as O.S.No.198 of 2009. Broadly, and without getting into the nitty-gritty of the allegation on the rival side, the case of the respondent was that on 04.04.1993, the petitioner had executed an agreement wherein she had conceded that allotment of flat obtained in her name from the

Housing Board was obtained on behalf of the respondent, and that she would transfer the allotment to him in due course.

1.3. During Trial, the respondent/defendant had produced the aforesaid agreement dated 04.04.1993 as Ex.B-13. The plaintiff disputes the genuineness of the said document. It is in this circumstance, before the Trial Court, the petitioner had filed two petitions at the first instance, followed by three set of petitions at the second instance. Petition that she filed in the first instance are as follows:

Sl.No.	I.A.No.	Prayer
1/I	419 of 2011	To send the Ex.B.13 (the impugned agreement of the petitioner) to handwriting expert to obtain opinion on the genuineness of the signature of the petitioner in Ex.B.13 and comparing it with that of the signature available in the Vakalat as well as in plaint in O.S.No.110 of 2004.
2/I	418 of 2011	To reopen the evidence in O.S.No.110 of 2011, the respondent had filed his counter affidavit to these two petitions in which, he had inter alia has contended that the signatures in plaint and Vakalat are not same piece of comparable evidence.

S.No.	I.A.No.	Prayer
1/II	597 of 2011	For amending the petition and affidavit in I.A.No.419 of 2011 by which the petitioner sought to substitute the plaint and Vakalat in I.A.No.419 of 2011 with a sale deed dated 23.10.1997 which contained her signature.
2/II	598 of 2011	To receive the original of the said sale deed dated 23.10.1997.
3/II	596 of 2011	For reopening I.A.No.419 of 2011.

2. The Trial Court in one stroke has dismissed all the five applications by separate orders dated 02.08.2011. Challenging these orders, this batch of Revision Petitions were filed. The details are as below:

<i>CRP (PD) Nos.</i>	<i>Related I.A.Nos.</i>
5215 of 2011	419 of 2011
5216 of 2011	418 of 2011
5217 of 2011	597 of 2011
5218 of 2011	598 of 2011
3842 of 2016	596 of 2011

3. The learned counsel for the petitioner submitted that:

➤ Ex.B-13 is defendant's document, and since the petitioner has denied it, the burden is only on the defendant to establish it. But the petitioner has undertaken the responsibility of proving that the signature therein was not genuine and hence moved the Trial Court in I.A.No.419 of 2011. She could not have moved the Trial Court for comparing her admitted signature with her disputed signature earlier chiefly because the onus does not shift till the document purported to have been executed by the plaintiff. This document is now produced as Ex.B-13 was actually introduced in evidence.

➤ Secondly, when the respondent has taken up an objection as to the quality of documents, said to contain the admitted signatures of the plaintiff which she had produced to aid comparison, the petitioner had promptly replaced the same with a sale deed containing her admitted signature. Without considering the same, the Trial Court has mechanically approached the entire issue and dismissed all the petitions in one stroke.

4. *Per contra*, Mr.N.Ramakrishnan, the learned counsel appearing for the respondent/defendant would contend that the petitioner signs in few different ways and this has been conceded even in one of her petitions filed before the Court. In a scenario such as this, no useful purpose would be served in sending the Ex.B-13 to handwriting experts for opinion.

5. If this Court were to confine its endeavour to scanning the approach of the trial Court in disposing of the aforesaid batch of interlocutory applications, it must be said with a degree of disappointment that the Trial Judge has over simplified the issue. There is on demonstration an intention not to apply his mind adequately.

6. While dealing with I.A.No.419 of 2011, the learned Sub Judge has approached it independent of I.A.Nos.597 & 598 of 2011. In its order

the learned Judge would say that comparison of signatures in plaint and Vakalat are not comparable material to prove or disprove a disputed signature. What is overlooked here is the fact that the petitioner has already informed the Court about her intention to produce her admitted signature in a sale deed in the very same I.A.No.419 of 2011. Still the learned Judge dismissed both I.A.Nos.419 & 598 of 2011 and 597 of 2011 on the same day without taking a comprehensive view of all the prayers in all the three petitions.

7. In view of the reasoning that this Court has entered above, it is only appropriate that except CRP(PD).No.5217 of 2011, all the other petitions should be allowed. So far as, CRP(PD).No.5217 of 2011 is concerned, it arises from an order dismissing an application for amending the affidavit and petition filed in I.A.No.519 of 2011. Amending an affidavit may not be a permitted course in law, and even without this Application, the petitioner is free to produce such relevant materials before the Court to have her admitted signature compared with her disputed signature in Ex.B-13.

8. While allowing these remaining Revision Petitions, this Court seeks to set aside the order in I.A.No.419 of 2011 and remand it back to the Trial Court and it is required to dispose it of after taking into consideration the sale deed which the petitioner has produced. In this

connection, the Trial Court may also take into consideration any document which the respondent may produce, containing the signatures of the petitioner, for comparison along with the documents that the petitioner herself has produced. Trial Court must also remember that the burden of proving the impugned signature in Ex.B-13 is on the defendant, even though the petitioner may opt to take the burden on her shoulder. Since the Trial Court is required to apply its mind *de novo* on the issue, it may consider other evidences available on record before taking the decision in the matter.

9. Accordingly, the petitions are disposed as follows:

- Civil Revision Petitions in CRP(PD) No.5216 & 5218 of 2011 and 3842 of 2016 are allowed;
- CRP(PD) No.5215 of 2011 is also allowed and the order passed in I.A.No.419 of 2011 is set aside and remanded back;
- CRP(PD) No.5217 of 2011 is dismissed as not necessary.

No costs. Consequently, connected Miscellaneous Petition is closed.

05.04.2018

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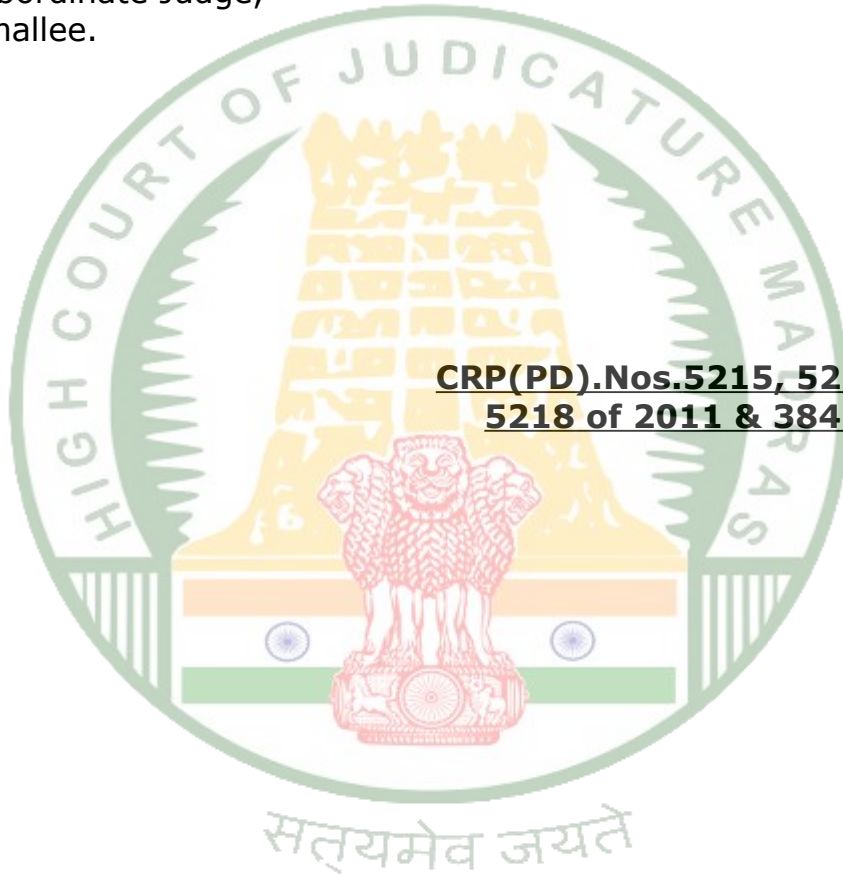
Index : Yes / No

N. SESHASAYEE, J.,

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To

The Subordinate Judge,
Poonamallee.



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5218 of 2011 & 3842 of 2016**

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