

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Revision Petition (PD) No.502 of 2018

P.Karuppannan

... Petitioner

Versus

Baby

... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of Constitution of India, against the fair and decretal order dated 12.01.2018 made in I.A.No.1379 of 2017 in O.S.No.278 of 2008 on the file of the District Munsif Court, Sankari.

For petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.A.Gouthaman

ORDER

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Challenging the fair and decretal order dated 12.01.2018 made in I.A.No.1379 of 2017 in O.S.No.278 of 2008 by the learned District Munsif, Sankari, the present Civil Revision Petition has been filed.

2. The petitioner/plaintiff has filed a suit in O.S.No.278 of 2008, before the District Munsif Court, Sankari, for specific performance in respect of the agreement of sale dated 05.12.2003 entered into between the plaintiff and the defendant and for permanent injunction against the respondent/defendant from alienating the suit property to third parties pending disposal of the suit. The respondent had entered appearance and filed her written statement denying the execution of the agreement of sale dated 05.12.2003 and also her left hand thumb impression in the Sale Agreement dated 05.12.2003. The defendant went to the extent of defending the suit as a ranked forgery. In view of such defence having been taken in the written statement, the petitioner has filed an application in the aforesaid suit to send the disputed document along with the admitted left hand thumb impression of the defendant to the Forensic Science lab to expert opinion. Accordingly, an expert opinion was obtained and as per the report of the expert, the admitted left hand thumb impression of the defendant does not tally with the signature in the sale agreement dated 05.12.2003. The petitioner thereafter, filed another application before the Court to send the defendant's right thumb impression to be compared with the thumb impression in the sale agreement dated 05.12.2003 and the same was also allowed and the expert gave his opinion that the admitted right thumb

impression of the defendant squarely matches with the thumb impression found in the sale agreement dated 05.12.2003. However, the report of the expert has not been marked and the deposition of the witnesses in the suit was completed. In such circumstances, the petitioner has filed the instant application seeking to reopen the evidence on his side and to permit him to mark the expert opinion and to examine the finger print expert on his side. The said petition was dismissed by the Court below on the ground that already the report of the finger print expert was marked as Ex.C1 and therefore, there is no necessity to re-open the suit for the purpose of marking the finger print expert report by examining the expert, who has issued such report. Aggrieved by the same, the present Civil Revision petition is filed.

3. The learned counsel appearing for the revision petitioner would submit that when the defendant had taken a defence denying her thumb impression in the agreement of sale, the plaintiff/petitioner has an obligation to disprove the same. For this purpose, the report of the expert opinion and the deposition of the expert are required. Even though the petitioner ought to have marked the report at the earliest point of time, he did not mark the document due to inadvertence. If the suit is therefore, reopened to enable the petitioner to examine the expert and to mark the report given by him as a document on the side of the plaintiff, no prejudice would be caused to any one.

4. Per contra, the learned counsel for the respondent would submit that sufficient opportunity was granted to the petitioner but he has not taken steps to examine the expert and after the evidence of the plaintiff side concluded, the present application has been filed at a belated stage. In fact, in the counter filed before the Court below, the respondent has furnished the dates on which the suit was posted for hearing and the adequate opportunities that were made available to the plaintiff to examine the finger print expert. Even otherwise, the finger print expert report is already marked as a Court document and therefore, it is not necessary to examine the finger print expert as a witness in the suit. Therefore, according to the learned counsel for the respondent, there is no necessity to interfere with the order passed by the Court below.

5. Heard the learned counsel for both sides and perused the materials available on record.

6. The suit was filed for specific performance of the agreement dated 05.12.2003 entered into between the plaintiff and the defendant. Since the defendant failed and neglected to come forward to execute the sale deed in favour of the plaintiff, the petitioner has filed the suit. On notice, the defendant filed a written statement denying the execution of the agreement of sale and

also her signature in the agreement dated 05.12.2003. Therefore, the plaintiff had taken out an application to compare the disputed signature contained in the agreement of sale dated 05.12.2003, with the admitted signature of the defendant. Accordingly, the opinion of finger print expert was obtained, which reveals that the signature in the agreement of sale dated 05.12.2003 is that of the defendant. Even though, such a report was obtained by the plaintiff, he did not mark the opinion of the finger print expert during the course of trial. Of course, the petitioner ought to have marked the report of the finger print expert, but due to inadvertence, he did not mark the document during the course of trial.

6. Admittedly, there was a report obtained from the finger print expert and it is vital for the purpose of elucidating the real controversy in the suit. Even though, the plaintiff did not mark the report of the finger print expert by examining the finger print expert, the trial court, in the interest of justice, ought to have allowed the application filed by the plaintiff. Therefore, in the interest of justice, this Court is of the view that the plaintiff shall be permitted to examine the author of the report submitted by the finger print expert and the defendant shall be given an opportunity to cross-examine the witness.

7. In view of the above facts and circumstances of the case, the

impugned order dated 12.01.2018 in I.A.No.1379 of 2017, passed by the learned District Munsif, Sankari is set aside. Consequently, the civil revision petition is allowed with a direction to the trial Court to dispose of the suit in O.S.No. 278 of 2008 as expeditiously as possible preferably on or before 30.07.2018. No costs.

09.03.2018

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To

The District Munsif, Sankari.



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D. KRISHNAKUMAR, J

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