

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2018

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).No.31 of 2016

and

CMP.No.166 of 2016

S.P.Karthikeyan ... Petitioner/1st Defendant

Vs.

Periyasamy ... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 28.10.2015 in I.A.No.103 of 2015 in O.S.No.162 of 2008 on the file of the II Additional Subordinate Judge at Erode.

For petitioners : Mr.Ms.Sripriya

For Respondent : No appearance

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ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order dated 28.10.2015 in I.A.No.103 of 2015 in O.S.No.162 of 2008 on the file of the II Additional Subordinate Judge at Erode.

2. According to the petitioner, the respondent filed a suit in O.S.No.162 of 2008 before the II Additional Subordinate Court, Erode for partition and separate possession against the petitioner. The petitioner is denying the sale deed dated 27.08.1993 which has marked by the respondent/plaintiff as Ex.A2. The signatures of Mr.Sabapathy said to have been executed before the Sub Registrar Office, Erode appears totally different. While bearing the signatures the petitioner has filed an application under Order 16 Rule 21 and Section 151 of the Code of Civil Procedure. The Court below has considered the said application and dismissed the said application by holding that the petitioner has filed the application only to drag on the proceedings.

3. Furthermore, it is also submitted by the respondent that previously similar petition has filed for comparison of signatures in I.A.No.97 of 2014 was already allowed and expert has given the report, by stating that insufficient of signatures. Another petition filed for comparison of the signatures in I.A.No.150 of 2011 and the same was dismissed by the Court and the Civil Revision Petition has been filed before this Court and the same was dismissed and subsequently I.A.No.146 of 2014 was filed for sending the documents for private expert which was also dismissed by the Court

below and no revision sofar preferred and thereafter, filing the very same similar application, after seven years and therefore, on the aforesaid ground the Court below has dismissed the said application.

4. In the light of the decision of the Hon'ble Supreme Court of India reported in ***Thiruvengadam Pillai Vs. Navaneethammal and Another, (2008) 4 SCC 530*** wherein in the 17th paragraph which reads as follows:

"17.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... "

5. In ***P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood v. 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 the hand writing expert.

6. In the light of the above said facts and decision of the Hon'ble Supreme Court of India, it is the burden of the respondent/plaintiff to prove the genuineness of the Ex.A2. Therefore, this Court is not inclined to interfere with the order of the Court below and there is no error or illegality in the impugned order passed by the Court below and the Civil Revision petition is liable to be dismissed.

7. In fine, the order in I.A.No.103 of 2015 in O.S.No.162 of 2008 dated 28.10.2015 on the file of the II Additional Subordinate Judge at Erode is confirmed and therefore, the Civil Revision Petition is dismissed. The Court below is directed to dispose of the suit as expeditiously as possible preferably, within a period of three months

from the date of receipt of a copy of this order. No costs.

Consequently, the connected Miscellaneous Petition is closed.

07.03.2018

Speaking/Non-speaking order

Index :Yes/No

Internet :Yes/No

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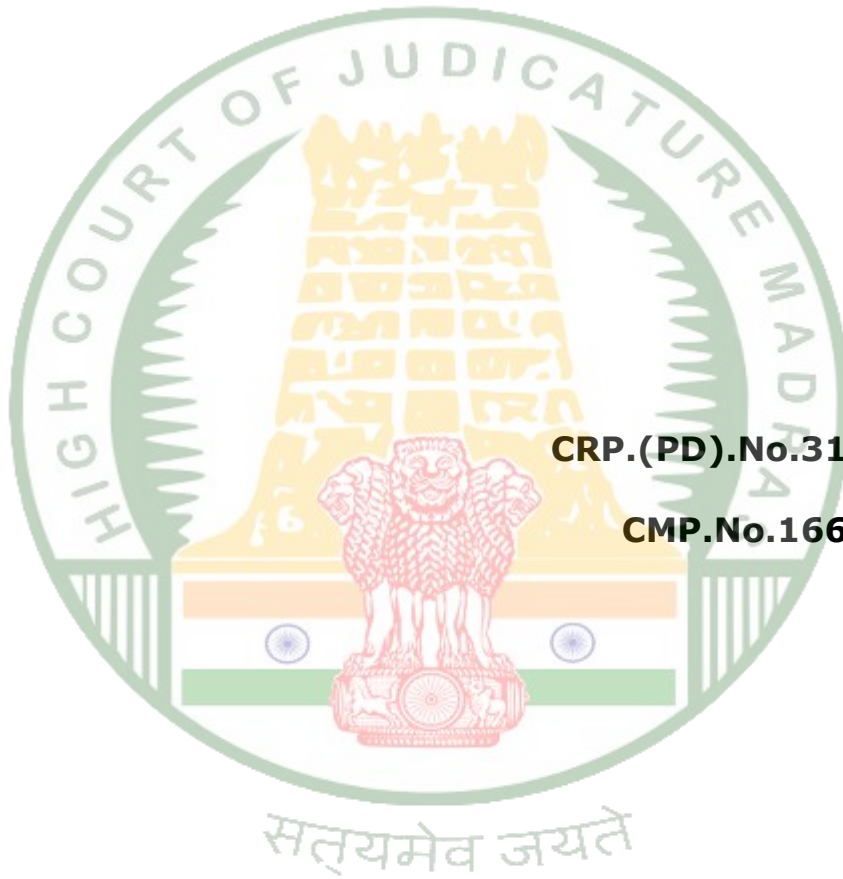
The II Additional Subordinate Judge,
Erode.



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D.KRISHNAKUMAR. J,

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