

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.2679 of 2013
and M.P.No.1 of 2013

M.S.Venkatesan

.. Petitioner

Vs.

1.Land Acquisition Cum Special Deputy Collector
Land Acquisition Cell
Chennai Metropolitan
Development Authority
Chennai 600 008.

2.Narmada

3.Prabhakaran

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 19.04.2013 made in I.A.No.12294 of 2012 in L.A.O.P.No.5 of 2004 on the file of the VI Assistant City Civil Court, Chennai.

For Petitioner : Mr.M.S.Subramanian

For R1 : No appearance

For R2 & R3 : Mr.K.Dhananjayan

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 19.04.2013 made in I.A.No.12294 of 2012 in

L.A.O.P.No.5 of 2004 on the file of the VI Assistant City Civil Court, Chennai.

2.The petitioner is third claimant, the first respondent is Referring Authority and respondents 2 and 3 are the claimants 1 and 2 in L.A.O.P.No.5 of 2004 on the file of the VI Assistant City Civil Court, Chennai. According to the petitioner, originally, he owned an extent of 97 cents in Old Survey No.63/3, Koyambedu Village and sold an 60 cents Thangakrishna Nadar and another 20 cents to Palani Naicker. The petitioner retained 17 cents for his personal use. In the year 1994, he came to know that the respondents 2 and 3 forged documents fraudulently and claimed to be owners for the suit property measuring 17 cents in Survey No.63/3. The petitioner filed complaint before XI Metropolitan Magistrate, Saidapet. Meanwhile, the land in Survey No.63/1B was acquired by the Government for the purpose of Koyambedu Wholesale Market Complex. The petitioner's name was shown as owner of the land under Section 4(1) notification in Tamilnadu Government Gazette dated 25.09.2001. While so, the respondents 2 and 3 claim ownership for the suit property. The matter was referred to the Court for apportionment of compensation. The third

respondent/second claimant filed proof affidavit and marked final report submitted by the Police in D.F.I.R.No.642/1994 as Ex.C10 to show that signature and thumb impression in disputed sale deeds belong to the petitioner. The petitioner filed I.A.No.12294 of 2012 for rejection of document marked by respondents 2 and 3 as Ex.C10 in the proof affidavit as the same cannot be considered as evidence as per Section 33 of the Evidence Act.

3.The respondents 2 and 3 filed common counter affidavit and contended that second respondent purchased an extent of 10 cents and second respondent's mother, Janaki Ammal purchased 7 cents on 01.02.1964. The said Janaki Ammal settled the said 7 cents in favour of the third respondent by the settlement deed dated 23.06.1989. The petitioner filed suit in O.S.No.6809 of 1997 on the file of the XVII Assistant City Civil Court, Chennai which was dismissed for default. The signature and thumb impression in the sale deeds is not forged, but it is genuine one. The petitioner executed the sale deed in favour of the second respondent and mother of the second respondent by two sale deeds both dated 01.02.1964. In the complaint filed by the petitioner, final report was filed stating that the thumb impression and signature in the sale

deeds are that of the petitioner. Final report was taken on file and complaint was closed and prayed for dismissal of the application.

4.The learned Judge considering the averments in the affidavit, counter affidavit, report filed by the Investigating Officer and judgments reported in **2010 (8) SCC 423 (Shalimar Chemical works Ltd., V.Surendra Oil & Dal mills (refineries) and others)** and **AIR 1963, Calcutta 431 (Sunil Kumar Datta and others Vs. The State of W.B)**, dismissed the application holding that Ex.C10 is a public document and the same cannot be rejected for evidence.

5.Against the said order of dismissal dated 19.04.2013 made in I.A.No.12294 of 2012 in L.A.O.P.No.5 of 2004, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner contended that the learned Judge erred in holding that Ex.C10 is a public document and the same could be marked. It is not stated as to what document the expert has compared with Ex.C10 and who has given the information. Without examining expert, Ex.C10 cannot be marked.

The proceedings in the Criminal Court is not binding in the subsequent Civil Proceedings. Ex.C10 does not come under Sections 40, 41 and 42 of Indian Evidence Act and it is irrelevant as per Section 43 of Indian Evidence Act and therefore, cannot be marked.

7. In support of his contentions, the learned counsel for the petitioner relied on the judgment reported in **(2009) 11 SCC 545 (Seth Ramdayal Jat Vs. Laxmi Prasad):**

"23. We, therefore, are of the opinion that although the judgment in a criminal case was not relevant in evidence for the purpose of proving his civil liability, his admission in the civil suit was admissible. The question as to whether the explanation offered by him should be accepted or not is a matter which would fall within the realm of appreciation of evidence. The trial Court had accepted the same. The first appellate Court refused to consider the effect thereof in its proper perspective. The appellate Court proceeded on the basis that as the judgment of the criminal Court was not admissible in evidence, the suit could not have been decreed on the said basis. For the said purpose, the admission made by the appellant in his deposition as also the effect of charge had not been taken into consideration. We, therefore, are of the opinion that the High Court cannot be said to have committed any

error in interfering with the judgment of the first appellate Court."

8.Per contra, the learned counsel for the respondents 2 and 3 contended that the petitioner sold 17 cents in the year 1964 itself by two sale deeds both dated 01.02.1964 to second respondent and her mother, Janaki Ammal. Subsequently, the second respondent's mother executed a settlement deed dated 23.06.1989 in favour of the third respondent. In the Criminal Complaint given by the petitioner, investigation was conducted. The expert has given opinion that the signature and thumb impression of the petitioner in the Sub Registrar Office is that of the petitioner. The application in I.A.No.8525 of 2005 filed by the petitioner for production of original sale deed was dismissed by the Trial Court and the same was confirmed by this Court in C.R.P.No.1009 of 2011. The petitioner did not object the marking of the document at the time of marking and now he cannot maintain the present application to reject the document.

9.Heard the learned counsel for the petitioner as well as the respondents 2 and 3 and perused the materials available on record.

10. The contention of the learned counsel for the petitioner for rejection of Ex.C10 is that Ex.C10 is not a public document, the proceedings in Criminal Court is not binding in the subsequent Civil proceedings and final report cannot be marked without examining the expert. These contentions are without merits. The final report has been filed by the Police after investigation and based on the report, the complaint given by the petitioner was closed. The petitioner has not challenged the closure of the complaint before appropriate authority. The report has become final. In view of the closure of the Criminal complaint, the said report became the public document. Further the petitioner is not contending that Ex.C10 is inadmissible in evidence. According to the petitioner, Ex.C10 can be marked only by examining the expert who gave the report with regard to genuineness of the signature and thumb impression. The contention of the petitioner is that Ex.C10 was marked without following the procedure. In such a case, the petitioner ought to have objected to mark the said document when the same was produced before the Court. Having failed to object the marking of the document at that time, the petitioner is estopped from seeking to reject the same.

11.The learned Judge has considered all the above facts and dismissed the application by giving cogent and valid reason. There is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 19.04.2013 made in I.A.No.12294 of 2012 in L.A.O.P.No.5 of 2004.

12.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. Since, the L.A.O.P is of the year 2004, the learned Judge is directed to dispose of the same, as expeditiously as possible, in any event, not later than three months from the date of receipt of a copy of this order.

Index :: Yes/No

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To

1.The VI Assistant Judge,
City Civil Court,
Chennai.

2.The Land Acquisition Cum
Special Deputy Collector,
Land Acquisition Cell,
Chennai Metropolitan,
Development Authority,
Chennai 600 008.



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V.M.VELUMANI,J.

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