

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.12.2018

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.R.P.(NPD).No. 4504 of 2014

and

M.P.No.1 of 2014

Annammal

...

Petitioner

Vs.

1.Pavalayee

2.D.Balakrishnan

...

Respondents

Prayer :- The Civil Revision Petition has been filed under Section 115 of The Civil Procedure Code against the dismissal order of the learned XV Additional City Civil Court, Chennai dated 09.10.2014 passed in CMP No.98 of 2014 in A.S.No.295 of 2013.

For Petitioner : Mr.C.A.Theagarajan

For first respondent/
Caveator : Ms.E.Ezhil Caroline

For Respondent
No.2 : No appearance

ORDER

The instant revision petition has been filed challenging the order dated 09.10.2014 passed by the XV Additional City Civil Court, Chennai, in CMP.No.98 of 2014 in A.S.No.295 of 2013.

Brief facts leading to the filing of the revision:

2.The petitioner is the second defendant in the suit in O.S.No.11110 of 2009 filed by the first respondent against the petitioner as well as the second respondent. The suit was filed by the first respondent seeking for a permanent injunction restraining the petitioner as well as the second respondent from constructing a wall in the suit schedule property. It is the case of the first respondent as seen from the plaint averments that the petitioner was the owner of two portions; one measuring 400 sq.ft and another measuring 1100 sq.ft. The petitioner executed a sale deed dated 15.07.1996 registered as document No.2357 of 1996 in favour of the first respondent for an extent of 400 sq.ft. The said sale deed is an undisputed sale deed. Subsequent to the execution of the undisputed sale deed dated 15.07.1996, it is the case of the first respondent that another sale deed dated 24.09.1996 registered as document No.3047 of 1996 was executed by the petitioner in favour of the first respondent for an extent of 1100 sq.ft. Since according to the first respondent, the petitioner and the second respondent attempted to construct a wall in the extent of 1100 sq.ft, the first respondent filed a suit in O.S.No.11110 of 2009 seeking for a permanent injunction restraining the petitioner as well as the second respondent from putting up a wall in the extent of land measuring 1100 sq.ft. In her written statement, the petitioner has admitted the execution of the sale deed dated 15.07.1996 for an extent of 400 sq.ft. but, disputed the execution

of the sale deed dated 24.09.1996 and has alleged that the said sale deed is a forged sale deed. The suit in O.S.No.11110 of 2009 was decreed in favour of the first respondent on 20.01.2012 by the Trial Court. As against the said judgment and decree dated 20.01.2012, the petitioner preferred an appeal in A.S.No.295 of 2013 before the XV Additional City Civil Court, Chennai. During the pendency of the appeal, the petitioner, who is the second defendant in the suit, filed CMP.No.98 of 2014 under Section 151 CPC to direct the first respondent to produce the original sale deed dated 24.09.1996 registered as Document No.3047 of 1996 before the Court for the purpose of sending the same to Forensic Expert to analyse the finger print. The first respondent also filed a counter in CMP.No.98 of 2014 filed by the petitioner. The Lower Appellate Court by its order dated 09.10.2014 in CMP No.98 of 2014 dismissed the said application on the ground that the petitioner has not specifically denied in her written statement, the execution of the disputed sale deed in favour of the first respondent. Aggrieved by the dismissal of the CMP No.98 of 2014, the second defendant in the suit has preferred this revision before this Court.

Submissions of the learned counsels:

3.Heard Mr.C.A.Theagarajan, learned counsel appearing for the petitioner and Ms.E.Ezhil Caroline, learned counsel appearing for the first respondent. In spite of service of notice on the second respondent, none appears on his side before this Court.

4. According to the learned counsel for the petitioner, once the petitioner has denied the execution of the disputed sale deed dated 24.09.1996 registered as Document No.3047 of 1996 in favour of the first respondent and has alleged the same to be a forged one in her written statement, the burden of proof is on the first respondent to prove the genuineness of the said sale deed. According to him, the petitioner, in her written statement, has specifically denied the execution of the disputed sale deed as it is a forged one. He drew the attention of this Court to the plaint averments as well as the pleadings in the written statement filed by the petitioner before the trial Court. He also further submitted that the petitioner is in possession of the property measuring an extent of 1100 sq.ft, for which, the first respondent claims that a sale deed was executed by the petitioner in his favour. The learned counsel for the petitioner further drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by L.Rs. & Ors.** reported in **AIR 2008 Supreme Court 2033** and referred to various paragraphs in the said judgment and submitted that as per the said judgment, when the defendant has filed his written statement denying the title of the plaintiff and setting up a clear and specific title in himself, the plaintiff ought to have amended the plaint to convert the suit into one for declaration and injunction. According to him, in the instant case, the petitioner has

categorically stated in her written statement that the disputed sale deed was never executed in favour of the first respondent and has also pleaded that she is in possession of the said property, which is the subject matter of the disputed sale deed dated 24.09.1996.

5.Per contra, the learned counsel appearing for the first respondent would submit that both the sale deeds were executed only by the petitioner and her children, who are the legal heirs of the deceased M.Raj. One is dated 15.07.1996 for an extent of 400 sq.ft and another is dated 24.09.1996 for an extent of 1100 sq.ft. According to him, the first respondent is in possession of both the extent of lands. He drew the attention of this Court to the plaint averments contained in para – 4, which is extracted hereunder.

" 4.The plaintiff respectfully submits that the plaintiff has let out a house portion in the build up area in the suit premises to the third party for monthly rent and the plaintiff had permitted the 2nd defendant herein to reside in a very small portion in the suit properties which is measuring about 5 x 6 30 sq.ft. The 1st defendant herein is the relative of the 2nd defendant herein who is residing in the very next house premises to the plaintiff's suit schedule properties."

6. According to him, as seen from the plaint averments, the first respondent is in possession of the entire extent of lands, totally, measuring 1500 sq.ft (1100 + 400) excepting for an extent of 30 sq.ft., which the first respondent permitted the petitioner to occupy as a permissive occupant and no legal rights were given to her even for the said extent of 30 sq.ft. He drew the attention of this Court to the pleadings contained in para -4 of the the written statement filed by the petitioner before the trial Court and submitted that the petitioner having undertaken to file a suit for declaration to declare the sale deed dated 24.09.1996 registered as document No.3047 of 1996 measuring an extent of 1100 sq.ft as null and void, the petitioner's application seeking to refer the said registered document to handwriting expert under Section 151 CPC is not maintainable as she has not filed any suit for declaration in respect of the property till date. Further, he would submit that the petitioner has not filed any application seeking to refer the disputed document to handwriting expert before the trial Court but has filed the same only in the lower appellate Court.

DISCUSSION

7. Two sale deeds are the subject matter of the suit. The execution of one sale deed dated 15.07.1996 by the petitioner in favour of the first respondent for an extent of 400 sq.ft. is not disputed. The petitioner has

disputed only the execution of the sale deed dated 24.09.1996 registered as document No.3047 of 1996 in favour of the first respondent for an extent of 1100 sq.ft. It has been the consistent stand of the first respondent that both the sale deeds were executed only by the petitioner and she is in possession of the total extent of 1500 sq.ft (1100 + 400) excepting for an extent of 30 sq.ft, which was permitted by the first respondent to be occupied by the petitioner as a permissive occupant.

8.In the written statement, the petitioner has admitted the execution of the sale deed dated 15.07.1996 for an extent of 400 sq.ft but has denied the execution of the sale deed dated 24.09.1996 for an extent of 1100 sq.ft in favour of the first respondent in para – 4 of the written statement. The petitioner has submitted that she has been advised to file a suit for declaration to declare the sale deed dated 24.09.1996 registered as Document No.3047 of 1996 measuring an extent of 1100 sq.ft allegedly executed in favour of the first respondent as null and void. Even though there is a pleading to that effect, till date, admittedly the petitioner has not filed any suit for declaration against the first respondent to declare the sale deed dated 24.09.1996 registered as document No.3047 of 1996 as null and void. The petitioner also did not file any application before the trial Court to refer the sale deed dated 24.09.1996 to an Handwriting Expert to prove the genuineness of the said document but the said application was filed only in the appellate

stage. The suit for permanent injunction filed by the first respondent against the petitioner as well as the second respondent was decreed in favour of the first respondent on 20.01.2012.

9.CMP.No.98 of 2014 was filed by the petitioner only in the appeal filed by the petitioner against the judgement and decree dated 20.01.2012 passed in favour of the first respondent. The Lower Appellate Court has dismissed CMP No.98 of 2014 on the ground that both the sale deeds are registered sale deeds. They have been executed by the petitioner and her children, who are the legal heirs of the deceased M.Raj. The execution of the sale deed dated 15.07.1996 is admitted by the petitioner, whereas, the sale deed dated 24.09.1996 is disputed by the petitioner. Both are adjoining lands and being registered sale deeds and the stand of the first respondent that a valid sale deed was executed by the petitioner in his favour being a consistent one, it is for the petitioner to prove and establish that the sale deed dated 24.09.1996 is a forged one. Further, in the instant case, the application for sending the document to Handwriting Expert was filed only in the appellate stage and not before the trial Court. Further, despite the pleading made in the written statement that she has been advised to file a suit for declaration, till date, no such suit was filed by the petitioner against the first respondent.

10. According to the learned counsel for the petitioner, the burden of proof is on the first respondent/plaintiff to prove that the sale deed dated 24.09.1996 was validly executed by the petitioner. If that statement has to be accepted, there was no necessity for the petitioner to file an application seeking to refer the disputed document to an Handwriting Expert. The petitioner cannot blow and cold.

11. In the considered view of this Court, the sale deed dated 24.09.1996 being a registered document and it has been the consistent plea of the first respondent that a valid sale deed has been executed, the burden of proof is on the petitioner to prove that the said sale deed is a forged document, for which, she should have filed a suit for declaration to declare the said sale deed as null and void, which, she has failed to do so in the instant case.

12. The judgment relied upon by the learned counsel appearing for the petitioner reported in **AIR 2008 Supreme Court 2033 (Anathula Sudhakar V. P.Buchi Reddy (Dead) by L.Rs & Ors.)** referred to supra is not applicable to the facts of the instant case. In the instant case, the first respondent is having a registered sale deed in her name. Further, the first respondent has taken a consistent plea that a valid sale deed was executed in her name and she is in possession of the entire extent of land (1100 sq.ft + 400 sq.ft) excepting for an extent of 30 sq.ft, which

was permitted by her to be occupied by the petitioner as a permissive occupant. No documentary evidence has been produced by the petitioner before the trial Court or in the first appellate Court to prove that she was in possession of the land measuring 1100 sq.ft, which is the subject matter of the sale deed dated 24.09.1996 and this Court has examined the impugned order and is of the considered view that the Lower Appellate Court has rightly rejected CMP No.98 of 2014 filed by the petitioner.

CONCLUSION:

13. In the result, there is no merit in this Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs. However, the lower Appellate Court shall dispose of the appeal without influencing the observation made in this order.

03.12.2018

Index : Yes / No

Internet : Yes / No

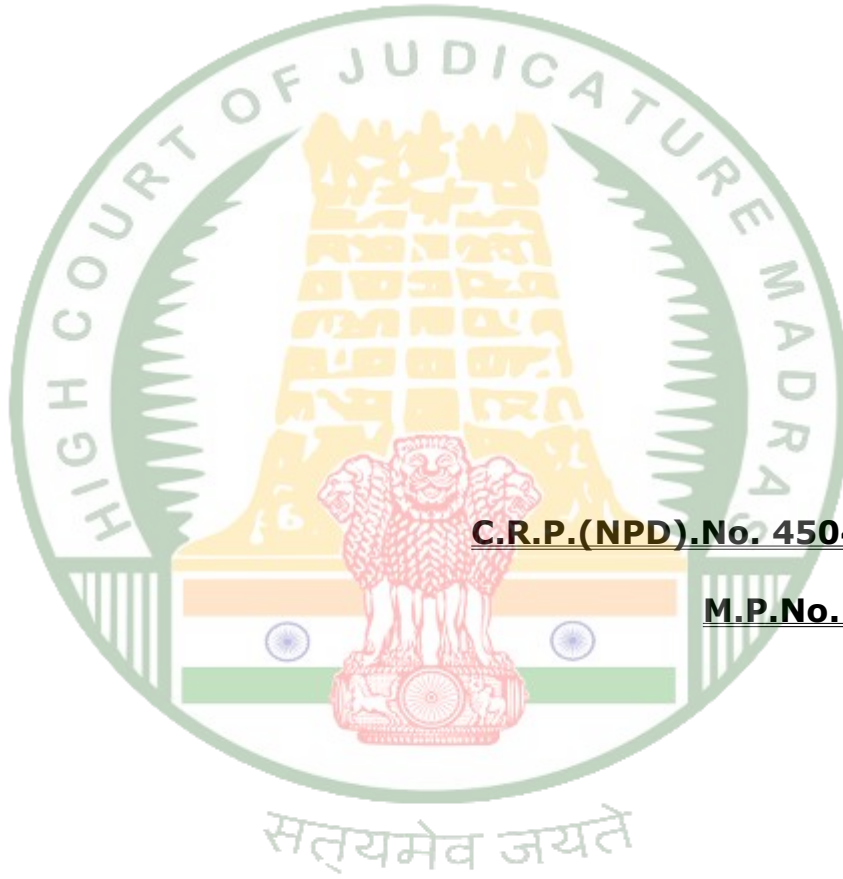
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To

1. The XV Additional City Civil Court,
Chennai

ABDUL QUDDHOSE,J.

sms/kyl



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