



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.09.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD) No.1441 of 2018

and

C.M.P.(MD) No.6223 of 2018

1.R.V.Sanjika Devi

2.C.Rajendran

... Petitioners

vs

1.Selvakumari

2.Jenish

3.Praveen Nisha

4.Jenisha

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 13.06.2018 of the learned Principal District Judge, Kanniyakumari District at Nagercoil, made in I.A.No.43 of 2018 in O.S.No.28 of 2012.

For Petitioners : Mr.K.N.Thampi

For Respondents : Mr.C.Godwin

ORDER

The plaintiffs in O.S.No.28 of 2012 on the file of the learned Principal District Judge, Kanniyakumari District at Nagercoil are the revision petitioners herein.

2.The said suit has been filed for directing the defendants to execute a sale deed in the name of the first plaintiff R.V.Sanjika Devi and on behalf of the original owner late M.Rajendran.

3.The case of the plaintiffs is that the said M.Rajendran, who is the original owner of the property had agreed to sell the suit property in favour of the first petitioner and in that regard he had received a sum of Rs.13,92,000/- and that he issued a receipt dated 25.10.2010 in that regard and on the same day, he had also executed a power of attorney in favour of the second plaintiff C.Rajendran. In both the documents, one Ambeeswaran had signed as a witness.



4. Though the execution of the power of attorney deed, which is a registered document is admitted including the signature affixed therein, the defendants denied the execution of the receipt dated 25.10.2010. In view of the denial of the signatures in the receipt, the plaintiffs filed I.A.No.43 of 2018 for sending the documents for comparison of the signature by a handwriting expert through an Advocate Commissioner. The Court below by an order dated 13.06.2018 dismissed the said I.A. Questioning the same, the civil revision petition has been filed.

5. Heard the learned counsel on either side.

6. The suit has been laid on the strength of the said receipt that was marked as Ex.A1. The defendants denied the signatures attributed to late M.Rajendran and Ambeeswaran. Therefore, the burden of proof is on the plaintiffs to substantiate that the signatures found in Ex.A1 are that of late M.Rajendran and Ambeeswaran. This burden can be discharged only if it can be compared with admitted signatures. Ex.A2 is the power of attorney, which was executed by late M.Rajendran and in which Ambeeswaran had signed as a witness.

7. In view of the above, as Ex.A2 is a contemporaneous document, the disputed signatures can very well be compared with it. Therefore, the order impugned in this civil revision petition is set aside. The Court below is directed to appoint an Advocate Commissioner to send Ex.A1 for comparison of the signatures of late M.Rajendran and Ambeeswaran with their admitted signatures in Ex.A2. The order passed by the Court below declining to compare the disputed signatures with those found in Ex.A17 to Ex.A19 is sustained. Accordingly, this civil revision petition is partly allowed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The Principal District Judge,
Kanyakumari at Nagercoil.

+ 1 CC TO Mr.K.N.THAMPI, ADVOCATE IN SR No. 84486
+ 1 CC TO Mr.C.GODWIN, ADVOCATE IN SR No. 84416

MM

TE/PM/SAR-3 : 27/10/2018 : 2P/4C