



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.377 of 2018 (PD)

and

C.M.P(MD)No.1685 of 2018

M.Abdul Kareem

... Petitioner/Petitioner/1st Defendant

Vs.

Sheik Parveen

... 1st Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 30.01.2018 passed in I.A.No.41 of 2018 in O.S.No.126 of 2005 on the file of the II Additional Subordinate Judge, Madurai.

For Petitioner : Mr.V.Ramakrishnan

For Respondent : Mr.S.A.Ajmalkhan

ORDER

This Civil Revision Petition has been filed challenging the order dated 30.01.2018 passed in I.A.No.41 of 2018 in O.S.No.126 of 2005, whereby and whereunder the petition filed by the petitioner / 1st defendant seeking to send Ex.P1 for comparison of with the admitted signature of the father of the petitioner /1st defendant in Exs.B5 and Ex.B41, was rejected.

2. The respondent / plaintiff has filed the suit in O.S.No.126 of 2005 for declaration that she is the absolute owner of the suit property and for injunction restraining the defendant from in any way interfering with the peaceful possession and enjoyment of the suit property. According to the respondent / plaintiff, the father of the petitioner / 1st defendant has executed the registered sale deed, dated 15.12.2003, (Ex.A1) in respect of the suit properties. According to the petitioner /1st defendant, his father has orally gifted the suit property in his favour and that his father was suffered by paralytic attack from February, 2003 and died in the year 2006 and therefore, he could not have signed in the sale deed and Ex.A1 is a bogus document. During the pendency of the suit, the petitioner / 1st defendant has filed an



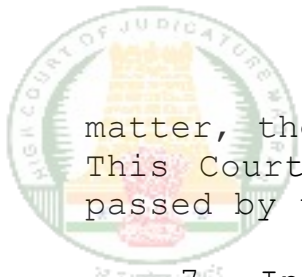
application in I.A.No.41 of 2018 before the Court below to obtain a report by comparing the alleged signatures of Mohammed Mustafa in Ex.A.1, with that of his signature in Ex.B.5 and Ex.B.41 by a handwriting expert of Forensic Department. But, the Court below has dismissed the said application. Challenging the same, the present Civil Revision Petition has been filed by the petitioner/ 1st defendant.

3. The learned counsel appearing for the petitioner / 1st defendant would submit that D.W.2, D.W.7 and D.W.8, who are totally independent and uninterested witnesses, have clearly spoken about the illness suffered by Late.Mohammed Mustafa even in the month of August, 2003 itself and that as he was suffered by paralysis, he could not subscribe his signature. He would further submit that in fact, the father of the petitioner / 1st defendant viz., Mohammed Mustafa has gifted the suit properties to him and that the petitioner / 1st defendant has a legal right to defend by attacking Ex.A.1 and it is for the said purpose he is seeking the signatures to be verified by the expert which will help the lower Court in arriving at a proper conclusion. Thus, he prayed to allow this civil revision petition.

4. The learned counsel for the respondent / plaintiff would submit that the said Mohammed Mustafa had executed the sale deed, which has been marked as Ex.A1, in respect of the suit properties and PW2, who is the wife of the said Mohammed Mustafa, has fairly conceded that the said sale deed was executed by the said Mohammed Mustafa in her presence and she has put her signature as one of the attostors. In order to drag on the proceeding, he has filed the said application. The Court below, after considering the above, has rightly rejected the relief sought for by the petitioner / 1st defendant and the same need not be interfered with. Thus, he prayed to dismiss the civil revision petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. It is seen from the record the petitioner / 1st defendant has already filed a suit for declaration in O.S.No.54 of 2004 in respect of the very same suit property, against his father by name Mohammed Mustafa, stating that suit property was orally gifted by Mohammed Mustafa. In the written statement, the said Mohammed Mustafa has specifically admitted that after receiving valid sale consideration, he has sold the suit properties to the respondent / plaintiff and that the respondent / plaintiff has become an absolute owner of the properties. Further, PW2, who is the wife of the said Mohammed Mustafa, has deposed that her husband had put his signature in Ex.A1 and she has also signed in the same as ~~attostor~~ ^{attestor}. As rightly stated by the Court below, there is no *prima facie* case made out by the petitioner / 1st defendant to send the document for expert opinion. It seems that for dragging on the



matter, the petitioner / 1st defendant has filed the said petition. This Court does not find any reason to interfere with the order passed by the Court below.

7. In view of the above, the Civil Revision Petition is dismissed at the stage of admission itself. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The II Additional Subordinate Judge,
Madurai.

+1cc to Mr.V.Ramakrishnan, Advocate Sr.No.50071

+1cc to Mr.S.A.Ajmalkhan, Advocate Sr.No.50058

GCG

VB/RSK/SAR3/26.04.2018/3P/4C

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