



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.04.2018
DELIVERED ON : 14.09.2018

WEB COPY

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) Nos.605 and 606 of 2018
and
CMP (MD) Nos.2699 and 2700 of 2018

1.Silambarava Vadivu
2.Udhayakumar
3.Venkatesh
4.Mohamed Iqbal ... Petitioners in both the CRPs /
Respondents 1 to 3 & 9/Defendants

VS

1.Raju
2.C.Ramalakshmi
3.Kanniyammal
4.Selvi
5.Panchavarnam
6.G.Karpagam .. Respondents in both the CRPs/ Respondents
4 to 8 / Defendants 4 to 8

Common Prayer: Civil Revision Petitions filed under Article 227 of Constitution of India, against the Fair and decreetal order made in I.A.Nos.51 and 52 of 2017 in O.S.No.75 of 2017 on the file of the Sub Court, Muthukulathur dated 11.01.2018.

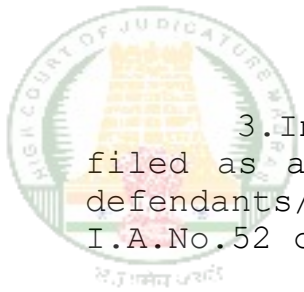
(In both the CRPs)

For Petitioners : Mr.D.Senthil
For Respondents : Mr.V.Sitharanjandas
: for R1
R2 to R6 - Dispensed with
(both CRPS)

ORDER

Both these Civil Revision Petitions are arising out of one and the same suit in O.S.No.75 of 2017 and the issue involved in the Civil Revision Petitions are also the same, hence following common order is passed.

2.In so far as Civil Revision Petition No.605 of 2018 is concerned, it is filed as against the order of allowing I.A.No.51 of 2017 made by the Sub Court, Muthukulathur dated 11.01.2018 filed for comparison of Signature by the plaintiff/respondent.



3. In as much as C.R.P.No.606 of 2018 is concerned, it is filed as against the order rejecting the application filed by the defendants/petitioners to cancel Exhibit A1 sale agreement in I.A.No.52 of 2017 dated 11.01.2018.

4. The defendants in the suit in O.S.No.75 of 2017 which was filed by the respondent /plaintiff for specific performance are the revision petitioners herein.

5. It is the submissions of the learned Counsel for the revision petitioners that respondents herein as plaintiff filed the Suit against the Revision petitioners in O.S.No.75 of 2017 on the file of the Sub Court, Mudukulathur for the relief of specific performance of the contract.

6. It is the contention of the Revision petitioners that the plaintiff has laid the suit basing upon Exhibit A1 sale agreement dated 30.04.2015 stating that the sale agreement was executed by defendants 1 to 3.

7. On the other hand the execution of sale agreement in favour of the respondent herein was denied by the Revision Petitioners. The trial was commenced and process of recording of evidence on behalf of plaintiff was over. The plaintiff examined himself as PW 1 and through him Exhibit A1 sale agreement dated 30.04.2015 was marked. Apart from PWs-1 and 2 other witness were examined on the side of plaintiff as Pws-2 and 3. According to the respondent/plaintiff, as the suit sale agreement Exhibit A1 was denied by the Revision Petitioners it necessitated him to file an application in I.A.No.51 of 2015 to compare the LTI of the first defendant, signatures of the defendants 2 and 3 in Exhibit A1 dated 30.04.2015. Admittedly signatures, Thumb Impression of the defendants 1 to 3 found in Exhibit A-21 sale dated 23.07.2015 and also to take LTI of 1st defendant, signature of the defendants 2 and 3 in the open Court and all the three documents can be sent to fingerprint expert opinion.

8. The Revision Petitioners also took out an application in I.A. No.52 of 2017 to scrap exhibit A1 sale agreement dated 30.04.2015 as the same is an unregistered and unstamped document.

9. It is the contention of Revision Petitioners that under Order 13, Rule 3 of C.P.C. the Court may at any stage of the suit, reject an irrelevant or inadmissible document. As Exhibit A-1 sale agreement is irrelevant and inadmissible document and as it has not been registered under section 17 of the Registration Act, the same is to be rejected as irrelevant. And further it was not written in the Stamp Paper. As per Amended Registration Act, the government has introduced the section 17 (1) A wherein all the sale agreements are required to be registered compulsory, otherwise it will have no legal sanctity. Therefore as per the Amendment Act 29 of 2012 the unregistered sale agreement exhibited as A1 cannot be received and marked as exhibit. Hence the Learned Counsel for the Revision



Petitioners argued that the said unregistered, unstamped sale agreement will have to be rejected.

10. In support of their contention, the learned counsel for the revision petitioners has drawn the attention of this court to the following Judgments:

i) Vasantha vs Manickam @ Thandapani reported in 2017 (3) TLNJ 459 (Civil),

ii) T.P.Latha @ Hemalatha and Ors vs P.Sukumar reported in 2013 (1) MWN Civil 753.

11. Per contra, it was contented by the learned counsel for the respondent that though exhibit A1 is not registered, it can be relied upon for collateral purpose. To support his contention, he has taken aid of section 49 of the Registration Act, 1908, which read as follows:

"49. Effect of non-registration of documents required to be registered.—No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument".

12. Therefore the Learned Counsel for the respondent contented that as per the above legal preposition unregistered document may be received as evidence in a suit for specific performance or as evidence of any collateral transactions, moreover at the time of marking Exhibit-A1 there was no objection made on the side of the Revision Petitioners. Even at the time of cross of PW1 no question was put as to valuation of Exhibit-A1 sale agreement. Therefore after marking the document Exhibit- A1 without making any objection, the present application filed under order 13, rule 3 of CPC is not maintainable in law.

13. In order to strengthen his contention, he has relied on the following decisions:

1) Bande Siva Shankara Srinivasa Prasad vs Ravi Surya Prakash Babu reported in 2016(2) MWN (Civil) 1,

<https://hcservices.ecourts.gov.in/hcservices/> We accordingly answer the reference as under:

It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances



of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/ signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed handwritings/signatures with admitted handwritings/signatures, separated by a time lag of 2 to 3 years, would be desirable so as to facilitate expert comparison in accordance with satisfactory standards. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the expert concerned to voice his conclusion as to whether the disputed handwriting/ signature and the admitted handwriting/signature are capable of comparison for a viable expert opinion. The view expressed by the Division Bench in JANACHAITANYA HOUSING LIMITED V/s. DIVYA FINANCIERS¹, as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue."

2. Kumar and another Vs Dhanapal , 2013 3 MWN(Civ) 654 15.

"15. It is a specific case of the appellants that Ex.A1 is inadmissible in evidence as it is not registered and under Ex.A1 possession was given and therefore it ought to have been registered. It is seen from Ex.A1 that possession was not given under the document and it is only stated that the plaintiff is cultivating the property as the 1st appellant is residing in another District. It has not been stated that under the document possession was given to the plaintiff. In the plaint also it is only stated that as a cultivating tenant he is in possession of the property and his possession is also recognized in the agreement. Therefore, the document does not require registration and this aspect has been considered by the trial Court. Hence, the 2nd substantial question of law is also answered against the appellants. Therefore, I do not find any infirmity in the findings of the Courts below and the Judgment and Decree of the Courts below are confirmed."

3. 2008 AIR(AP) 163 Janachaitanya Housing Ltd., Hyderabad Versus Divya Financiers, Guntur

"12. In Guru Govindu's case (supra), the plaintiff for recovery of certain amount on the strength of a promissory note. The defendant, after completion of plaintiff's evidence and while his evidence was in



"It is not as if the application under Section 45 of the Act must be filed soon after the written statement is presented. There may be instances where the necessity to file such application would arise after the oral evidence of certain witnesses is over. In case, the party concerned is able to elicit necessary information or admissions during the course of evidence, the necessity to file an application under Section 45 of the Act may not arise. Nothing prevents the party to a suit to file an application under Section 45 of the Act, even at the stage of arguments."

"No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court; for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case".

19. In the instant case, in Ex-A16, it has been clearly mentioned that possession of the suit properties has been given to the plaintiff. Only on that basis, the learned counsel appearing for the appellants/defendants has advanced his argument to the effect that Ex-A16 has to be

20. It has already been pointed out prior to



amendment dated 24-09-2001 in a suit for part performance filed under Section 53-A of the Transfer of Property Act, 1882, the suit sale agreement has to be registered but after amendment to previous Section, the same has been omitted. Further, the suit for specific performance can be instituted only under Chapter II of Specific Performance Act, 1963 and if a suit for specific performance is instituted under the said Chapter, an unregistered sale agreement can be received as evidence and there is no legal impediment and therefore, the second contention put forth on the side of the appellants/defendants is not legally correct."

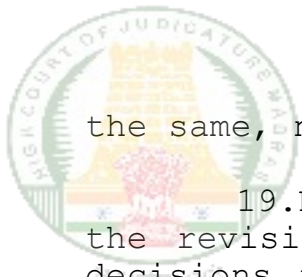
14. After hearing both side, the Learned Trial Judge allowed I.A.No.51 of 2017 and dismissed I.A.No.52 of 2017 by separate order dated 11.01.2018. Aggrieved over the said Impugned Order, the Revision Petitioner is before the Court with these Two Revisions.

15. I heard Mr.D.Senthil, learned counsel for the Revision Petitioners and Mr.V.Sitharanjandas, learned counsel for the 1st respondent and entire materials available on records are perused.

16. On perusal of records it is disclosed that I.A.No.52 of 2017 has been filed under Order 26, Rule 10-A of C.P.C. after the commencement of trial, more particularly after examination of witness on the side of the plaintiff. According to the respondent, he filed the application to compare the LTI of the 1st defendant and signatures of defendants 2 and 3 found in Ex-A1 with their admitted signatures and LTI comparison by the scientific experts, since the signatures and thumb impression in Exhibit-A1 sale agreement was denied by the Revision Petitioners. The trial court has allowed the said application holding that it is duty of the plaintiff to prove the signatures in Exhibit A1, when it was denied by the defendants 1 to 3. Therefore the defendants/Revision Petitioners may not have any objection to compare the signatures and LTI found in Exhibit A1 sales agreement with their admitted the signatures and LTI found in Exhibit A21 sale deed.

17. In the considered opinion of this court, the order of the Learned Trial Judge directing the Revision Petitioners to produce Exhibit A-21 original sale deed before the Court and directing the first defendant to give thumb impression and signature of defendant 2 and 3 in the open Court for the purpose of sending those documents for comparison along with Exhibit-A1 sale agreement to the scientific Expert Opinion is proper and does not required any interference.

18. It is further clear that the discretion has been vested in the Civil Court to get any scientific or expert opinion if necessary and experiential in the interest of the justice. In this case Trial Court found that to get scientific expert opinion of Exhibit- A1 is necessary to prove the case of the plaintiff and therefore ordered



the same, not warranting any interference by this court.

19. Now, it is for this Court to analyse the decision cited by the revision petitioners. This court has gone through above cited decisions with due care and caution and considering the nature of present case on hand I am of the view that the above cited decisions by the revision petitioners are not made applicable. On the other hand the decisions cited by the learned Counsel for respondent is squarely applicable to the facts of the present case.

20. Now coming to CRP.(MD)No.606 of 2018, it was filed as against dismissal of I.A.No.52 of 2017 which was filed by the revision petitioners under Order 13, Rule 3 of C.P.C. to reject Exhibit-A1 sale agreement from the file of the Suit. In this regard, this Court has carefully considered the decisions relied on either side.

21. In this connection, this Court would like to have reference to the judgements reported in 2017 (5) CPC 33 in the matter of Kumar and others Vs Danapul and 2003 (3) MWN (civil) 654. In above said decisions, it was held that in a suit for specific performance filed for mere enforce the contract between the plaintiff and defendants with the Limited prayer not to transfer the property. It is further held that section 49 of the Registration Act clearly show that the sale agreement can be received as an evidence in a suit for specific performance, therefore I am of the view that section 49 of The Registration Act is come to the aid of the plaintiff and it is rightly observed in the said judgements that the plaintiff has not filed any suit to protect his possession and he filed the suit only to enforce the contract.

22. In view of above discussion and in the light of the decisions cited supra, I don't find any infirmity or irregularity in marking of sale agreement as Exhibit-A1 by the Trial Court and therefore Exhibit- A1 need not be cancelled from the file of the suit in O.S.No.75 of 2017.

23. In the result, both the Civil Revision Petitions are dismissed and the orders and decree made in I.A.Nos.51 & 52 of 2017 in O.S.No.75 of 2017 dated 11.01.2018 are hereby confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)



To

The Sub Court,
Muthukulathur.

+1cc to Mr.V.Sitharanjandas, Advocate in SR No.84222

+2cc to Mr.D.Senthil, Advocate in SR NO.84264 and 84265

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NM/PM/SAR I/12.11.18/8P/5C.