



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2018

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(PD) (MD) No.769 of 2018
and C.M.P.(MD) No.3406 of 2018

1.Thandayudhapani

2.Ondimuthu

... Petitioners/Petitioners/Plaintiffs

-Vs-

1.Faritha Hussian

2.Shanawash Khan

3.Jahir Hussian

..Respondents/Respondents/Defendants

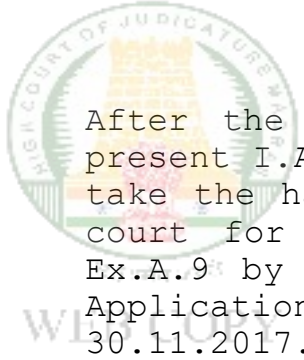
Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 30.11.2017 passed in I.A.No.89 of 2017 in O.S.No.1618 of 2010 on the file of the Principal District Munsif Court, Tiruchirappalli.

For Petitioners : Mr.K.S.Shangar Murali

For Respondents : Mr.R.Sundar SRinivasan

ORDER

The plaintiffs in O.S.No.1618 of 2010 on the file of the Principal District Munsif Court, Trichirappalli are the revision petitioners. The revision petitioners have filed the said suit seeking permanent injunction that the defendants should not dispossess them except by due process of law. In their plaint, the plaintiffs have claimed that they were originally the cultivating tenants of the suit property and it was sold in favour of the respondents herein. After such sale, the third defendant issued receipts to the first plaintiff acknowledging receipt of the lease paddy and the receipts were enclosed along with the plaint as Document Nos. 8 to 10. Though the defendants 1 and 2 filed independent written statements, the third defendant did not choose to file any written statement on his own, but, filed a memo adopting the written statement filed by his wife namely, the first defendant.



After the plaintiffs' side was closed, the plaintiffs filed the present I.A.No.89 of 2017 for appointing an Advocate Commissioner to take the handwriting of the third defendant in the presence of the court for comparing the same with the handwriting in Ex.A.7 to Ex.A.9 by the Government Forensic Expert. The said Interlocutory Application was dismissed by the court below by the order dated 30.11.2017. The correctness of the said order is questioned in this Civil Revision Petition.

2. Heard the learned counsel appearing on either side.

3. The court below has dismissed the Interlocutory Application by giving a finding that the signatures as well as the contents of Ex.A.7 to Ex.A.9 are different from each other and there is no internal tallying among them. The court below has further observed that while the third defendant is known as Jahir Hussain the Ex.A.7 to Ex.A.9 have been signed by Jahangheer. After making the comparison of Ex.A.7 to Ex.A.9 and after going through Ex.A.7 to Ex.A.9, the court below dismissed the Interlocutory Application.

4. It must be noted that the third respondent has not filed any independent written statement specifically denying the allegations made by the plaintiffs in their plaint, particularly, paragraph No.8. The third defendant has only adopted the written statement of the first defendant by filing a memo. The plaintiffs have come out with a very specific case that the third defendant had issued Ex.A.7 to Ex.A.9. In the list of documents filed along with the plaint, it has been specifically mentioned that the receipts were issued by Jahangheer in favour of the first defendant. Therefore, failure on the part of the third defendant to specifically deny these aspects may really go to the root of the matter.

5. That apart, the case of the revision petitioners is that not only the signatures found in Ex.A.7 to Ex.A.9 but also the handwriting set out therein should be compared with the admitted signature of the third defendant. In this case, the court below has not done so. In fact, the exercise of comparison was not done with any admitted signature or handwriting of the third defendant. Instead the three documents were compared among themselves.

6. The learned counsel appearing for the revision petitioners would specifically submit that the second defendant was examined as D.W.1 and that he was cross-examined. He made a statement that he did not propose to examine the third defendant as a witness in this case. It is this has impelled the petitioner to take out the present application.

7. As already observed by this Court, the court below had undertaken the exercise of comparison, not with any admitted signature or handwriting of the third defendant, but, only among the three documents. It is clearly not correct. Hence, the order impugned in this civil revision petition is set aside. The matter is remanded



back to the file of the court below. The court below shall call upon the third defendant to put his signature to give his sample signature as well as write out the contents of Ex.A.7 to Ex.A.9 and thereafter take a decision as to whether the matter is to be referred for forensic opinion.

8. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No.3406 of 2018 is closed.

Sd/-
Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Principal District Munsif Court,
Tiruchirappalli.

+1CC to Mr.K.S.Shangar Murali, Advocate, SR.No.88212
+1CC to Mr.R.Sundar Srinivasan, Advocate, SR.No.87872

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