



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (MD) Nos.221 and 222 of 2015

Ramachandran

... Petitioner/Petitioner/Plaintiff
in both petitions

-vs-

Kalimuthu

... Respondent/Respondent/Defendant
in both petitions

Prayer in CRP(MD) 221/2015: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records relating to the fair and decreetal order passed in I.A.No.1015 of 2014 in O.S.No.491 of 2011 dated 19.11.2014 on the file of District Munsif Court at Kumbakonam, set aside the same and thus render justice.

Prayer in CRP(MD) 222/2015: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records relating to the fair and decreetal order passed in I.A.No.1017 of 2014 in O.S.No.491 of 2011 dated 19.11.2014 on the file of District Munsif Court at Kumbakonam, set aside the same and thus render justice.

For Petitioner : Mr.M.R.S.Prabhu

For Respondent : Mr.S.Anwar Sameem

C O M M O N O R D E R

The plaintiff in O.S.No.491 of 2011 on the file of District Munsif Court at Kumbakonam is the petitioner before this Court and he had filed the suit seeking for a decree of specific performance. The suit was contested by both parties and the judgment was reserved by the Trial Court. Subsequently, the petitioner / plaintiff took out two applications in I.A.Nos.1015 and 1017 of 2014 in O.S.No.491 of 2011, seeking to reopen the said suit and also for appointment of an Advocate Commissioner for comparison of signatures as found in Ex.A1 with Ex.B.13 to Ex.B23 respectively. Both the applications were dismissed by the Trial



Court and challenging the same, the petitioner / plaintiff is before this Court.

2. It is the case of the petitioner that though the respondent/defendant has entered into an agreement of sale with the petitioner and the sale agreement was marked as Ex.A1, later the defendant has denied his signature found in the said agreement. It is the further case of the petitioner that he has discharged his initial burden of proving the document by examining one of the attestors of the document.

3. The petitioner states that the burden of proof is now shifted to the defendant to prove that the signature in Ex.A1 does not belong to him and therefore, it is absolutely necessary to send Ex.A1 along with the admitted signature in Ex.B13 to Ex.B23 to a handwriting expert for opinion.

4. Learned counsel for the respondent has submitted that only to drag on the proceedings, the petitioner has come out with such petitions, that too, after reservation of the case for final verdict by the Trial Court and the petitions are liable to be dismissed in limine.

5. In this case, the defendant has denied his signature and he should have proved before the Court below that the signature as found in Ex.A1 does not belong to him. The petitioner / plaintiff has taken a risk and has filed a petition under Section 45 of the Indian Evidence Act, 1872 r/w Order XXVI Rule 10-A CPC and Section 151 CPC to prove the signature of the defendant in Ex.A1. Admittedly, the defendant has opposed to the said application and this Court is not inclined to permit the defendant to make his objection, because the defendant has denied his signature in the written statement.

6. Therefore, this Court is of the view that if Ex.A1 is sent for expert opinion, that will be very helpful for the Court below to arrive at a just decision. Though the learned Judge has dismissed both the applications on the ground that the applications have been filed belatedly and the suit is posted for judgment at the fag end of the case, it will serve the interest of justice if the signature in Ex.A1 is send for handwriting expert.

7. In the result,

a) both the Civil Revision Petitions are allowed, thereby setting aside the order passed in I.A.Nos.1015 and 1017 of 2014 in O.S.No.491 of 2011 dated 19.11.2014 passed by the learned District Munsif Court at Kumbakonam;

<https://hcservices.ecourts.gov.in/hcservices/>

b) the Trial Court is directed to send the documents in Ex.A1 along with Ex.B13 to Ex.B23 to a handwriting expert for opinion



and obtain a report from him within a period of two weeks from the date of receipt of a copy of this order;

c) after getting the report from the expert, the Trial Court shall grant one week's time to both plaintiff and defendant to put forth their argument in respect of expert opinion and thereafter, shall pass judgment in O.S.No.491 of 2011 within a period of two weeks. No costs.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

The District Munsif Court,
Kumbakonam.

Copy to

The Section Officer, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.T.Antony Arul Raj, Advocate Sr.No.60218

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VB/SKN/RSK/SAR4/24.04.2018/3P/5C

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