



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2018

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (PD) (MD) .No.1999 of 2016

Ponnammal

... Petitioner

Vs.

Muthu Krishnan

... Respondent

PRAYER : Petition filed under Article 227 of Constitution of India, to call for the records pertaining to the fair and decretal order in I.A.No.235 of 2016 in O.S.No.235 of 2006 dated 25.07.2016, passed by Principal District Munsif, Ambasamudhram and set aside the same.

For petitioner : Mr.K.P.Narayana Kumar

ORDER

The revision petitioner is the fifth defendant in O.S.No.235 of 2016 on the file of the learned Principal District Munsif, Ambasamudram. It is a suit for specific performance. The case of the revision petitioner is that she purchased the suit property from defendants 1 to 4 as early as on 02.06.2003. In order to defeat her rights, the plaintiff engineered the suit document which is said to be a sale agreement executed by D1 to D4. On the strength of the said sale agreement, the present suit for specific performance has been laid.

2.In the said suit agreement, the thumb impression attributed to second defendant is there. The case of the revision petitioner is that the second defendant has not affixed his thumb impression at all in the said agreement. He therefore, wanted a comparison of the actual thumb impression of the second defendant with the disputed thumb impression.

3.In this regard, the revision petitioner filed I.A.No.202 of 2013. The same was allowed on 01.08.2014. But then, the second defendant has not come forward to give his thumb impression for the purpose of said comparison. Hence, the petitioner herein filed I.A.No.235 of 2016 under Order 16 Rule 5 of CPC. The same was dismissed by order dated 25.07.2016 on the ground that the ~~petitioner~~ ^{petitioner} cannot compel the attendance of the second defendant for this purpose. The correctness of the said order is questioned here.



4. Though the respondent's name is printed in the cause list upon his service, he has not chosen to enter his appearance either in person or through counsel.

5. Heard learned counsel for the revision petitioner.

6. I am of the view that when the Court had allowed an I.A.No.202 of 2013 by order dated 01.08.2014 and the same has become final, it is the duty of the Court below, to ensure that this is enforced. Therefore, the Court cannot remain a mute helpless spectator in this case. The power has been conferred on the Court below in terms of Order 16 Rule 5 of CPC. The Court below will have to summon the second defendant for the purpose of giving his thumb impression. If the second defendant declines to honour the said summon, the Court can also take recourse to the procedure set out in Order 16 Rule 10 of CPC.

7. In this view of the matter, directing the Court below to invoke the powers conferred on it, by the aforesaid provision, the order impugned in this Civil Revision Petition is set aside and this Civil Revision Petition is allowed. No costs.

Sd/-

Assistant Registrar (ADI)

// True Copy //

Sub Assistant Registrar (CS-I)

To:

1. Principal District Munsif,
Ambasamudhram.
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.K.P.NARAYANA KUMAR, Advocate SR. NO. 83222

ORDER MADE IN
C.R.P. (PD) (MD) .No.1999 of 2016
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