

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.3229 of 2013
and M.P.No.1 of 2013

M.Palanisamy

... Petitioner

Vs.

1. The State by Inspector of Police,
Anti-Land Grabbing Special Cell,
Tiruppur District Crime Branch,
Cr.No.27/2011.

2. T.K.Subramaniam

3. V.S.Somasundaram

4. S.Dhivanayaki

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India against the order and final order as made in I.A.No.951/2012 in O.S.No.57/2006 dated 04.02.2013 on the file of the Sub-ordinate Judge at Tiruppur in allowing the said I.A.

For Petitioner : Mr.V.Ayyadurai
Senior counsel for Muthukumarasaamy

For Respondents : Mr.K.Venkatasubham for
M/s.Sarvabhaunam Associates

ORDER

This civil revision petition is directed against the order and final order as made in I.A.No.951/2012 in O.S.No.57/2006 dated 04.02.2013 on the file of the Sub-ordinate Judge at Tiruppur in allowing the said interlocutory application.

2. The brief facts of the pleading to file this revision is as follows:

(i). The second respondent being the plaintiff filed the suit in O.S.No.57 of 2006 to enforce the agreement dated 05.08.2003 executed by the Power Agent of the defendants No.1 and 2. It is the case of the Defendants 1 and 2 that the sale agreement is a forged one and the power of attorney has been cancelled immediately within a period of two days after executing cancellation of Power of Attorney i.e., on 06.08.2003 and the plaintiff's Power Agent colluded together and created that document. In the meanwhile, a criminal complaint also lodged against the Power Agent as well as the plaintiff in the above suit in Cr.No.27 of 2011 dated 10.08.2007 for the offence under Sections 409, 464, 294(b), 506(1) and 420 of IPC.

(ii). When the matter came before the Investigation Officer, he moved an application in I.A.No.212 of 2012 before the Trial Court to send the above unregistered sale agreement dated 05.08.2003 to the Security Press, Hyderabad to scientifically ascertain the exact date, month and year of printing of the Stamp paper for Rs.20/- and also it is prayed, after such opinion is obtained, send the above agreement to the Forensic Lab Government of Tamil Nadu to find out if any erasing or overwriting has been done with the above document. It appears that the contesting parties have said no objection in the Trial Court. Accordingly, the trial Court allowed the above application and the unregistered sale agreement in question was sent to the Security Press, Hyderabad. It appears that the Report is also received from the Security Press, Hyderabad by the Trial Court stating that the date of the stamp and name of the Treasury Office to which particular supply was made cannot be confirmed since the stamp papers printed and supplied during the above period were not bearing the serial number and name of the State.

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(iii). Based on the above Report, the Trial Court has closed that Interlocutory Application in I.A.No.212 of 2012. Thereafter, another Investigation Officer filed an application in I.A.No.951 of 2012 to send

for the above document as far as the second relief prayed in I.A.No.212 of 2012. The Trial Court has ordered the relief and sent the original document to the Forensic Lab Government of Tamil Nadu to find out any erasing or inter collusion in the document, challenging the same, the present civil revision petition is filed.

3. Heard both sides and also perused the materials available on record.

4. Challenging the said order, the learned senior counsel appearing for the appellant submitted that the Investigation Officer has no power to collect the evidence before the Civil Court. The earlier application (I.A.No.212 of 2012) is already closed whereas, the second application (I.A.No.951 of 2012) is filed before the Trial Court which cannot be permitted in law, however, such application is filed. Hence, it is the contention that the Investigation Officer, only in order to help the defendants 1 and 2, filed such application before the Trial Court. The Civil Court ought not have entertained such an application, enabling the Investigation Officer to collect evidence against law. Hence, he submitted that the order of the Trial Court requires interference.

5. Further, the learned senior counsel contented that this Court has granted interim stay on 02.09.2003 and the stay was continued till 19.09.2013. However, the trial Court sent the document to the Forensic Department in violation of stay and further contented that no application is filed to vacate the stay. Limited stay will be deemed to be in force.

6. Another contention of the learned senior counsel that after final Report is filed, the second interlocutory application is also not permitted in law for the simple reason that final Report has been filed.

7. Learned counsel for the respondent submitted that though the revision was filed, there was no stay during that period. The Trial Court has already sent the document to the Forensic Lab, Government of Tamil Nadu and Forensic Lab, Government of Tamil Nadu has also sent Final Report to the learned Sub Judge, Tirupur.

8. Further contention of the learned counsel for the respondent that when the document was sent to the Forensic Department, there

was no stay at all and Report has been received, after that, the interim stay has not been extended. Hence, it is submitted that the subsequent application is continuation of earlier application and the revision petitioner has said no objection while allowing the first application, hence, now they cannot oppose the said application. Hence prays for dismissal of the suit.

9. The order of trial Court in which the document was sent to the Forensic Lab, Government of Tamil Nadu is under challenge in this civil revision petition. It is a peculiar case where the Investigation Officer invoked the jurisdiction of the Civil Court for collection of evidence through the expert. The suit filed based on the unregistered document for sale, which was opposed by the defendants on the ground that the same was forged and fabricated by Power Agent and the plaintiff. When the suit was pending, a complaint was registered against the Power Agent as well as the plaintiff in Crime. No.27 of 2011. These facts are not in dispute, during the pendency of the suit. The Investigation Officer in the above crime number and has filed an application in I.A.No.212 of 2002 for sending these document to the Security Printing Press, thereafter, to the Forensic Department to find out any manipulation in the document. At that stage, the contesting

defendants including defendants 1 and 2 have said no objection. In view of the same, the trial Court has allowed the application and the document was sent to the Security Press, Hyderabad.

10. The second prayer in the above I.A. is to send the document to the Forensic Lab, Government of Tamil Nadu, whereas, when the application was allowed for second prayer, the document was sent only to the Security Press, Hyderabad and the Report is also received. Based on such report, the Trial Court closed the application. Thereafter, the present application is filed to send the unregistered document to Tamilnadu Forensic Department as per the second prayer in I.A.No.512 of 2002 sought in the earlier application in I.A.No.212/2012, the Trial Court has sent the document, which is challenged in the present civil revision petition.

11. The learned counsel for the respondent has now brought to the notice of this Court that Report is also received from the Forensic Lab, Government of Tamil Nadu, by the learned Sub Judge, Tiruppur and produced the certified copy of the same before this Court. On perusal of the said Report which has been received on 23.10.2013 . As far as the the contention of the learned senior counsel that when the

stay was granted by this Court, the trial Court ought not have sent the document to the Forensic Department.

12. On perusal of the Report, the lower Court has sent the document by his letter No.D.463/2012 dated 29.06.2013. On that day, there is no stay at all and the stay was obtained only on 02.09.2013. Further, the stay continued till 19.09.2013. The Forensic Department has sent the Report dated 11.10.2013. The very purpose of the document being sent to Forensic Lab, Government of Tamil Nadu is only to unravel the truth. On first occasion, the revision petitioner himself said no objection. Now, the Report has already reached the Court. It is now for the Investigation Officer to collect the Report from the concerned Court for the purpose of criminal case. Since the defendants have not chosen to send it to Forensic Department, the Investigation Officer has collected the evidence through the Civil Court, where the document was filed. Accordingly, this revision is dismissed.

13. However, it is for the parties to take appropriate proceedings to prove the above document by send for all these documents from the criminal Court or seek for the Police Report and examine the report.

14. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

15. The trial Court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order.

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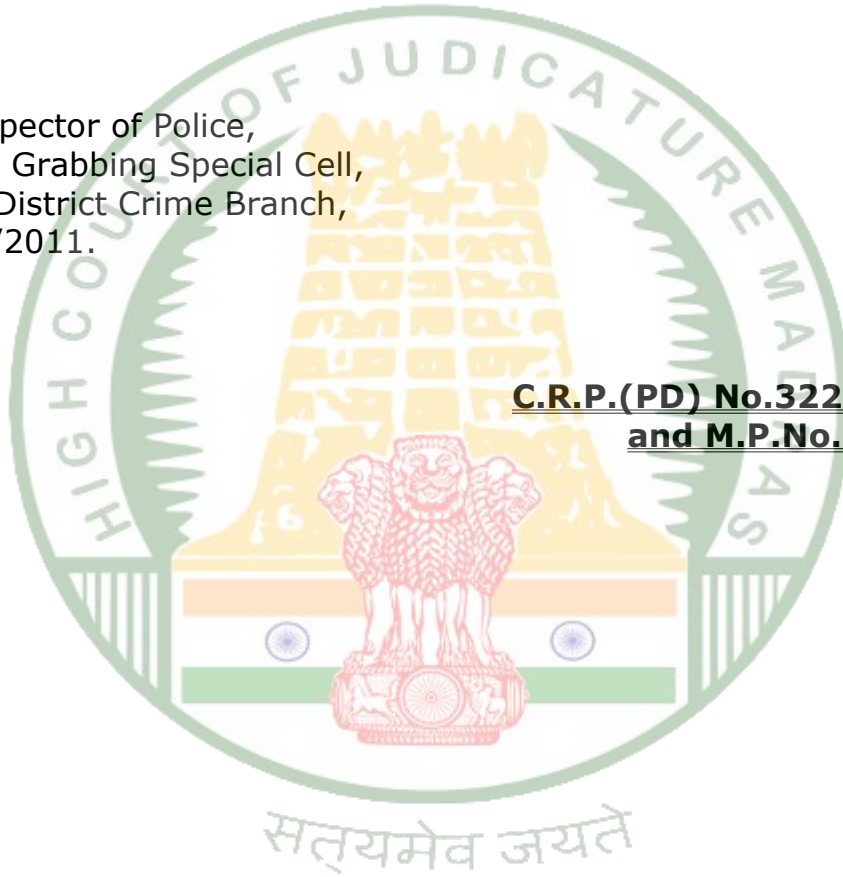
N. SATHISH KUMAR, J.
msv

To

1. The learned Sub-ordinate Judge
Tiruppur

2. The Inspector of Police,
Anti-Land Grabbing Special Cell,
Tiruppur District Crime Branch,
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