

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.4403 of 2013

and

M.P.No.1 of 2013

Chenniappan

... Petitioner/Petitioner

Vs.

1. V.P.Thangamuthu

2. A.Navabjan

3. Minor Boopesh

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 16.09.2013 made in I.A.No.370 of 2013 in O.S.No.736 of 2008, on the file of the II Additional District Munsif, Erode, by allowing this Civil Revision Petition.

For Petitioner : M/s.M.Sudha

For M/s.C.Munusamy

For Respondents : M/s.N.Manoharan

ORDER

This Civil Revision Petition has been filed against the Order 16.09.2013 made in I.A.No.370 of 2013 in O.S.No.736 of 2008, on

the file of the II Additional District Munsif, Erode, against the order of the dismissal of the application filed by the plaintiff in the suit for declaration and permanent injunction send for Ex.B5 the admitted signature in Power of Attorney, dated 27.05.2008 and Ex.B9 is the disputed signature document dated 17.06.2008, expert opinion.

2. The Suit in O.S.No.736 of 2008, has been originally filed to cancel the document of sale said to have been executed by the power agent, on the basis of the Power of Attorney dated 27.05.2008. The entire allegation in the plaint inter alia shows that the Power of Attorney was executed in a loan transaction and there was an understanding between the parties that the Power or Attorney should not be used to create any other document. Contrary to said understanding the Power Agent has sold the property to the second defendant result of a fraud between the plaintiff and defendants 1 and 2. During the pendency of the suit the defendant has produced Ex.B9 the receipt said to have been executed by the plaintiff to prove the consideration for the sale deed. The plaintiff has denied the signature in the receipt at this stage, he has filed an application to send for the original Power of Attorney along with disputed receipt marked as Ex.B9 for comparison by the hand writing expert.

3. The trial Court dismissed the application on the ground that since the issue itself is in regard to the intention of the plaintiff to execute the deed, no expert evidence was required.

4. Heard Mr.C.Munusamy, assisted by M/s.M.Sudha, learned counsel appearing for the revision petitioner and Mr.N.Manoharan, learned counsel appearing for the respondents and perused the order of the trial Court.

5. The suit itself is filed to avoid the document on the ground that there is a fraud. It is the main contention of the plaintiff, that the sale deed executed on the basis of the Power of Attorney is not supported by any consideration and he has also denied the receipt said to have been executed by the first defendant in favour of the second defendant. When the issue relates to a specific fact with regard to passing consideration, when unregistered Receipt is fitted against admitted signature available in the registered deed.

6. This Court is of the view that expert evidence is necessary. Infact, it will enable the court to adjudicate the entire issue between the parties properly. In view of the same, the order of the

trial Court dismissing the application is hereby set aside and the trial Court is directed to send Ex.B9 receipt dated 17.06.2008 and Power of Attorney dated 27.05.2008, to the handwriting expert in the Forensic Department and the revision petitioner shall pay necessary fees for the same. The trial Court shall appoint an Advocate Commissioner in this regard within a period of two months from the date of receipt of a copy of this order. The revision petitioner shall pay the Advocate Commissioner fees as fixed by the Lower Court and also to pay the necessary fees to the Forensic Department. A copy of this order shall be sent to the trial Court immediately.

7. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

18.02.2019

Index: Yes/No

Speaking/ Non-Speaking

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To

1. The II Additional District Munsif, Erode.

2. The Section Officer, VR Section, Madras High Court.

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N.SATHISH KUMAR, J.

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