

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.12.2019

PRONOUNCED ON : 19.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.650 of 2013

and

M.P.No.1 of 2013

K.T.Meenakshi ...Petitioner/Plaintiff

.. Vs ..

1.M.Velu ...1st Respondent/
2nd Defendant

M.Pushpavathy (Deceased)

2.V.Vijaya ...2nd Respondent/
4th Defendant

3.S.Rani

4.M.Anjali ...Respondents 3 & 4
Defendants 9 & 10

5.Sadalakshmi Ammal ...5th Respondent/
1st Defendant

6.Pounammal

7.Dayalan

8.Kannan

9.Manimala ... Respondents 6,7,8 & 9
Defendants 5,6,7& 8

सत्यमेव जयते

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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.6853 of 2011 in O.S.No.1904 of 2005, dated 18.12.2012 by the learned V Assistant Judge, City Civil Court, Chennai.

For petitioner	: Mr.K.V.Ananthakrushnan
For R1	: Mr.R.Ganesh
For R2 to R4	: No appearance
For R5 to R9	: Given up

JUDGMENT

This Civil Revision Petition has been filed against the order passed in I.A.No.6853 of 2011 in O.S.No.1904 of 2005, dated 18.12.2012 by the learned V Assistant Judge, City Civil Court, Chennai.

2 The plaintiff in the suit is the Revision Petitioner herein. The revision petitioner/plaintiff has filed O.S.No.1904 of 2005 for declaration of title to the suit property and for consequential permanent injunction to restrain the defendants therein from interfering with the peaceful possession of revision petitioner/plaintiff and for declaration that the decree passed in O.S.No.1452/1983, are not binding upon the plaintiff.

3 The defendants have filed a written statement alleging that the power of attorney is fabricated one and the signature contained therein is not his signature and issues are framed; trial

has conducted; evidence of plaintiff and defendants were marked and posted for arguments. At that stage, the first defendant has filed an application in I.A.No.12845 of 2007 to produce the alleged sale agreement during the month of November, 1997 and to send the power of attorney for expert opinion through an Advocate Commissioner. The said I.A was allowed and the Advocate Commissioner was appointed to hand over the documents to the Forensic Department.

4 It appears from the records that the Forensic Department opinion has arrived with regard to the Thumb impression and with regard to the signature and additional sample documents were sought for. Despite several opportunities given to the defendant, he has not come forward to produce the admitted signature for comparison with the disputed signature found in the power of attorney and hence, I.A was closed.

5 Subsequently, I.A.Nos.1700 of 2010 and 6853 of 2011 were filed, wherein, the defendants in the suit, have sought for to call for certain records from the Court which is in the Record Section for furnishing the additional documents. Despite several

adjournments given to the defendants, they have not come forward to produce the additional documents and hence, I.A.No.1700 of 2010 was dismissed on 22.02.2011. Thereafter, another application in I.A.No.6853 of 2011 was filed to send for the documents pertaining to the suit filed before the learned District Munsif Court, Poonamallee, as against, which the appeal was filed and records are available in the Court and orders have been passed. Aggrieved against the order passed in I.A.No.6853 of 2011, the plaintiff in the suit has preferred the above revision.

6 The learned counsel for the petitioner would submit that at the time of the trial, the second defendant in the suit has come forward with I.A.No.12845 of 2007, which was filed before the City Civil Court, Chennai, to send the original power of attorney document No.629, dated 13.12.1993 registered at Saidapet Sub Registration Office, Chennai - 15 filed by the plaintiff in O.S.No.1904 of 2005, to the Forensic Department through an Advocate Commissioner to verify the genuineness and correctness of the thumb impression impressed by defendants 2,3 and 4 on the original general power of attorney documents by the petitioner. Despite several opportunities were given after passing of several

adjournments only, he had put the signature in the presence of the plaintiff's counsel in the Court and the affixed his signature. The Forensic Department has returned the same for clarification with regard to signature asked for additional documents.

7 The defendants 2,3 & 4 have filed an application in I.A.No.1700 of 2010, to send for the document, since he has not produced the additional documents thereafter, it was closed. Again, another I.A.No.6853 of 2011 was filed to send for certain documents pending with the Court record. On earlier two occasions, he has not shown his diligence, it is only to drag on the proceedings as a number of years and also relied upon the docket entries passed by the Trial Court.

8 The core point that has to be considered in this case is, whether on above stated background and facts and circumstances and whether to send for vakalath filed in A.S.No.134 of 1997 from the Record Section for verification of signature with power of attorney for expert opinion is to be allowed or not.

9 As stated supra, the revision petitioner/plaintiff filed

O.S.No.1904 of 2005 for declaration of his title and for permanent injunction against the defendant and further to declare the decree in O.S.No.1452 of 1983 is not binding upon the plaintiff. The main contention of the defendant is that the alleged power of attorney is fabricated one and also disputed his signature in the said agreement of sale.

10 On a perusal of the records, it is seen that the evidence on the side of the plaintiff was closed and matter was posted for recording the evidence on the side of the defendant. As early as in the year 2007, the first defendant filed I.A.No.12844 of 2007 & 12845 of 2007. I.A.No.12844 of 2007 was filed to produce the alleged sale agreement in the month of November, 1997 and the same was dismissed. I.A.No.12845 of 2007 was filed to send the Power of Attorney documents for expert opinion and the same was allowed and Advocate Commissioner was appointed. When the matter was sent to Forensic Department, after examination of the thumb impression and the signature, the thumb impression is found to be compared and the hand writing expert, who had examined the documents has required two more admitted documents prior to the date of disputed documents for comparison. Though, sufficient time

has been given by the Court below, for the reasons best known, the defendant has not complied with the request made by the Forensic Department to furnish the admitted signature prior in point of time and further, by an order dated 22.02.2011, in I.A.No.1700 of 2010, the Trial Court had directed the defendants 2, 3 & first defendant to produce five to ten documents prior to the date of disputed documents for expert opinion, but he has not taken any steps with the above said order passed in I.A.No.1700 of 2010. Since, he has not complied with the conditional order, order in I.A.No.1700 of 2010 became final.

11 Now, it appears that the third said petition is I.A.No.6853 of 2011 filed to send vakalath in A.S.No.134 of 1997 in O.S.No.398 of 1993 for comparison. Admittedly, in the said proceedings in O.S.No.398 of 1993 (in A.S.No.134 of 1997, the revision petitioner is not a party), the thumb impression in the vakalath and written statement cannot be compared, as per the decision reported in **2010[1] LW 646 (Mad) – [S.Chinnathai Vs.K.C.Chinnaduri]**

12 It is to be stated that despite earlier two opportunities

were given by the Court in I.A.Nos.12844, 12845 of 2007 and I.A.No.1700 of 2010, the present petition has been filed in the year 2011. In other words, after five prolonged years, it is to be stated that now the petitioner/defendant wanted to call for vakalath in A.S.No.134 of 1997 for comparison. Admittedly, the petitioner is not a party to the said proceedings. It is always open to him to comply with the instructions of the Forensic Department, who has undertaken the job of comparison of thumb impression and the signature for comparison. However, for the reasonings unknown, the defendant has not utilized opportunity granted in I.A.No.12844 of 2007 and I.A.No.1700 of 2010. The Forensic Department, for the purpose of comparing of signature, wanted a document which contains signature of the party prior in point of time to the questioned documents and hence, it appears that without noting the above factual possession, the Trial Court, in a mechanical manner, has allowed the petition.

13 At this juncture, it is to be stated that the respondent herein/defendant in the suit has not taken earlier order in I.A.No.12845 of 2007, dated 06.08.2008 so also I.A.No.1700 of 2010 for number of years. Even though, sufficient opportunity has

been given to him, he has not complied with to supply all those documents for more than six years. Now, he has come forward with these applications to send the vakalath said to have been signed by him for verification. In view of the above said decision referred to above and also on the factual ground, I find that it is nothing but a technic to drag on the proceedings and he has not pursued his legal remedy in the proper manner.

14 In the result, the Civil Revision Petition stands allowed and the order passed in I.A.No.6853 of 2011 in O.S.No.1904 of 2005, dated 18.12.2012 by the learned V Assistant Judge, City Civil Court, Chennai, is set aside. The Trial Court is directed to proceed with the suit with existing documents and to deliver a judgment within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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19.12.2019

Index : Yes / No
Internet : Yes
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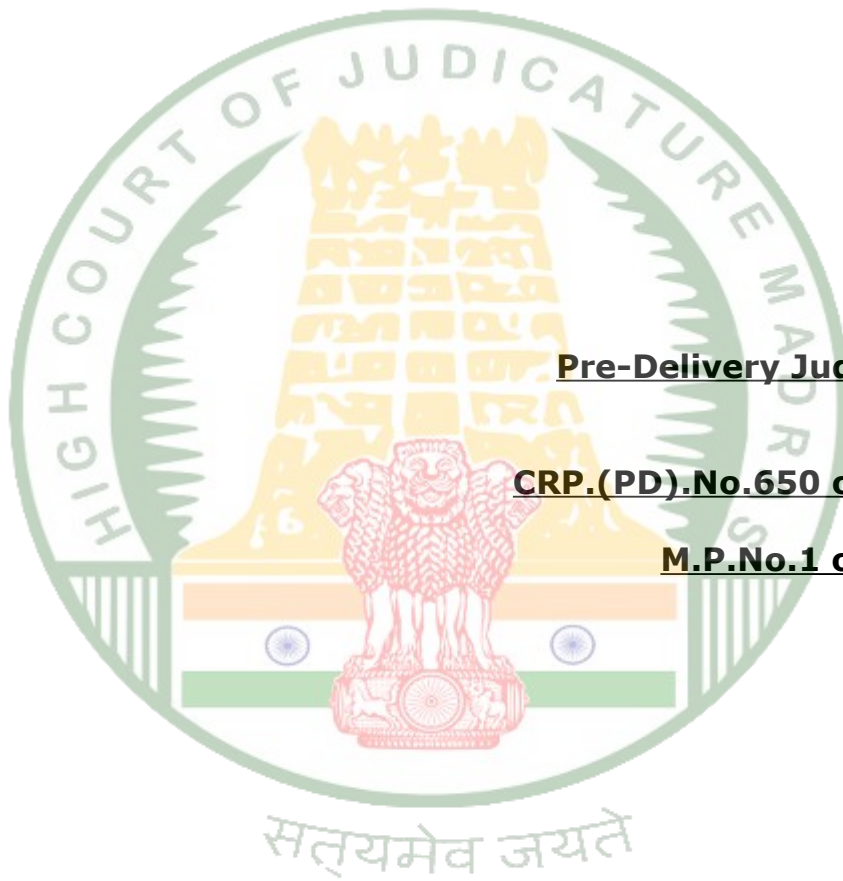
To

The learned V Assistant Judge,

City Civil Court,
Chennai.

RMT.TEEKAA RAMAN, J.

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Pre-Delivery Judgment
in
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and
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