

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 30.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

C.R.P.(PD).No.1942 of 2016

and

C.M.P.No.10111 of 2016

N.Kalaimani

...Petitioner

Vs

T.Krishnasamy

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree passed by the learned IV Additional District Judge, Coimbatore in I.A.No.225 of 2015 in O.S.No.160 of 2013.

For Petitioner : Mr.G.Karthikeyan

For Respondent : No Appearance

ORDER

Though notice has been served on the respondent and their names printed in the cause list, none appeared on her behalf.

2. The petitioner herein had made a specific averment in the written statement filed in the Month of September 2015 that she had not executed any sale agreement. Even prior to filing of the written statement, the petitioner filed her application on 12.12.2014 in I.A.No.225 of 2015 seeking for a direction to the plaintiff to produce the admitted signature found in settlement deed dated 08.02.2011, registered as No.821 of 2011, for the purpose of comparing the signatures in the sale agreement with that of the settlement deed, by an expert.

3. The respondent had contested the said application stating that the settlement deed was not in his custody, since the same was executed only in his wife's favour. Even otherwise, he had made a statement that the signature of the plaintiff was available in the Court Vakalat, which could be taken for the purpose of comparison.

4. The trial Court had rejected the petitioner's contention by observing that the settlement deed was not in the custody of the plaintiff and that if the original settlement deed is required, it can be summoned from the concerned Sub Registrar's Office at a later stage.

5. I am unable to accept such a reasoning by the trial Court. Firstly, it is seen that the plaintiff was an executor of the settlement deed and his signature was very much available. Even assuming that the settlement deed is not in the custody of the plaintiff, the observations that the original settlement deed can be summoned from the Sub Registrar Office at a later stage, may not be proper, since the very preliminary objection which the petitioner herein raised is that the signature in the sale agreement is not that of her. Unless and until this aspect is clarified by having the signature compared by the Forensic expert, no useful purpose would be served in getting along with the suit.

6. In normal circumstances, this Court would not permit the comparison of a signature found in the Vakalat along with the sale agreement. Nevertheless, when the plaintiff himself has come forward offering to have the signatures compared in the Vakalat, there cannot be any bar for the trial Court to accept the same.

7. For all the foregoing reasons, the order dated 19.02.2016 passed in I.A.No.225 of 2015 is set aside. Consequently, the prayer sought for in the application in I.A.No.225 of 2015 is allowed to the effect that the signature found in the Vakalat filed by the defendant in O.S.No.160 of 2013 shall be

sent to concerned Forensic expert to be named by the trial Court. The trial Court shall endeavour to dispose of the said application, as expeditiously as possible.

8. Accordingly, the present Civil Revision Petition stands ordered. No costs. Consequently, connected Miscellaneous Petition is closed.

30.01.2019

Index:Yes/No
Speaking order: Yes/No
hvk

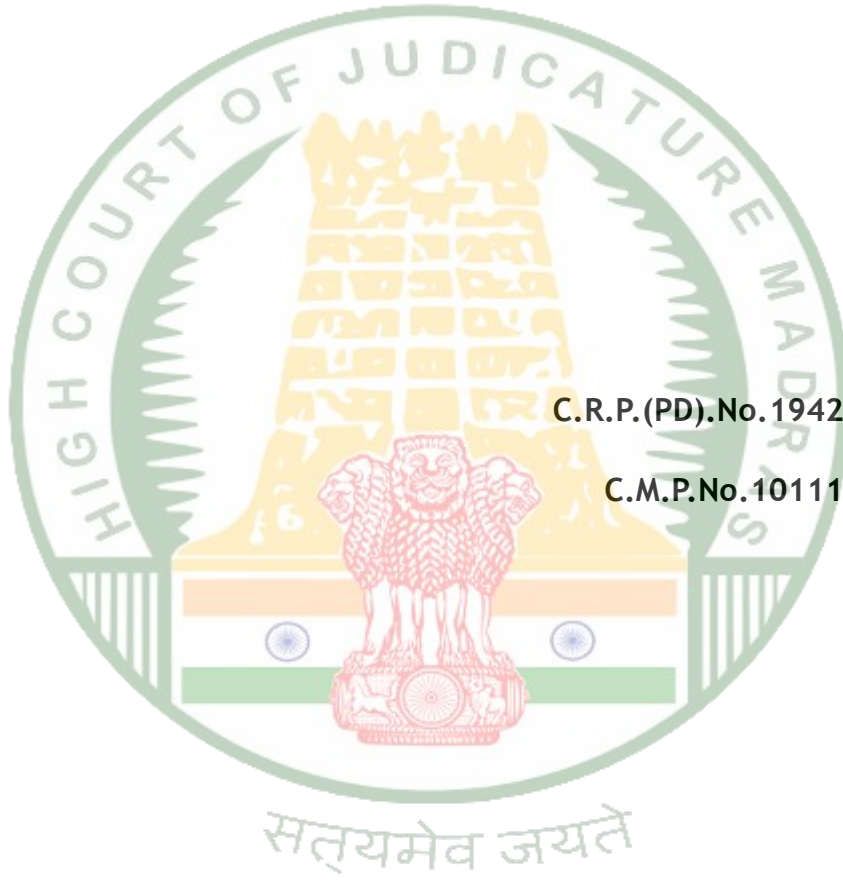
To
The IV Additional District Judge,
Coimbatore.



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M.S.RAMESH.,J

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