

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on :24.09.2019

Orders pronounced on : 18.10.2019

CORAM

THE HON'BLE MR. JUSTICE **R.PONGIAPPAN**

CRP.PD.No.3767 of 2014 and
M.P.No.1 of 2014

1.Dr.M.Sivaneswaran @ Sivanesan
2.S.Leela
3.S.Prabhu

..Petitioners

Vs.

Arasu

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 19.08.2014 made in I.A.No.55 of 2014 in O.S.No.63 of 2011 on the file of the Additional District and Sessions Court, Hosur.

For Petitioners : Mr.S.Mukunth
for M/s.Sarvabhauman Associates

For Respondent : Mr.V.Lakshmi Narayanan

ORDER:

The defendants 1 to 3 in O.S.No.63 of 2011 on the file of the Principal District Judge Court, Krishnagiri are the petitioners herein. Before the said court, the respondent in this Civil Revision Petition as a

plaintiff filed a suit as against the present revision petitioners, seeks relief of specific performance and directing the petitioners to execute and register the sale deed in respect to the suit property in favour of the plaintiff. The learned Principal District Judge, Krishnagiri after completing the trial while at the time when the case was posted for judgment, transferred to some other station. Hence, being the successor, the then Principal District Judge reopened the case for both side arguments and posted the same for hearing the arguments. During that time, the petitioners filed an application in I.A.No.55 of 2014 in which they prayed to send the alleged suit sale agreement dated 30.03.2009 executed by the first defendant in favour of plaintiff for expert opinion and for reopening the petitioners side case. The court below after affording opportunity to the present respondent / plaintiff specifically after receiving the counter from the respondent, by order dated 19.08.2014 dismissed the application filed by the petitioners by holding that the petitioners filed the application in belated stage. Aggrieved over the said finding, the petitioners are before this Court with the present Civil Revision Petition.

2.The learned counsel who appearing on behalf of the petitioners would contend that immediately after receiving the summons from the

court below, the petitioners doubted against the execution of sale agreement dated 30.03.2009. On 21.10.2011 the first defendant inspected the suit sale agreement and came to understand that the suit sale agreement is nothing but false, forged and created and not at all supported by any consideration. Immediately he sent the copy of the sale agreement along with the gift settlement deed executed by the first petitioner in favour of the second and third petitioners to one Truth Foundation, which is a private lab organized for giving opinion in respect to the signature, etc. The report given by the said lab is in clear that the alleged sale deed dated 30.03.2009 is a rank forged one. Only in the said circumstances, in order to disprove the case of the plaintiff, the petitioners / defendants filed the application to send the disputed sale agreement to a Forensic Science Department for the purpose of getting opinion from the hand writing expert. The court below without considering the reasons put forth by the petitioners dismissed the application by stating that the application is filed belatedly.

3. Per contra, the learned counsel appearing for the respondent would contend that the alleged sale agreement was sent to the Truth Labs on 29.07.2011. Thereafter after lapse of one year, the first

defendant herein was examined as DW1. More than that the cross examination of DW1 has also been completed in the year 2013. He would further contend that in the affidavit filed by the petitioners, no reason is assigned in relevance to the prayer sought in this Civil Revision Petition. According to the respondent / plaintiff the impugned order passed by the learned Principal District Judge, Krishnagiri is well considered one and therefore interference is not necessary.

4. The submissions made by the counsels on either side are considered.

5. While at the time of arguing the matter on behalf of the petitioners, the learned counsel appearing for the petitioners relied on the following judgments and reiterated the arguments advanced by him. In the judgment of **Kalaiselvan Vs. Velusamy and another** reported in **2007 (4) CTC 57**, this Court has held in paragraphs No.4 and 9 as follows:

"4. According to the plaint averments the disputed sale agreement was executed by the first respondent/first defendant on 20.01.2003. The first respondent/first defendant in the written statement has denied the execution of the said document and he has made a specific plea that the said sale agreement is a forged, fabricated, concocted and created one. It is also the admitted case

that before the trial Court, the first respondent herein has filed I.A.No.141 of 2004, requesting the Court to send the disputed document Ex.A.1, to an Expert viz, The Superintendent of Police (FP), Tamilnadu Finger Print Bureu, Mylapore, Chennai - 4. Admittedly, the said application was dismissed.

9. ...the earlier order passed by the learned Subordinate Judge is not on merits. As pointed out earlier, the said order has been passed on the three grounds namely, (1) the application has been filed belatedly; (2) the Court itself can compare the disputed signature with the admitted signature and (3) the signature could be proved by means of oral evidence or other circumstances. The order of the learned Subordinate Judge on these three grounds cannot be considered to be a final order on the question of fact so as to apply the rule of *res judicata*."

6. Similarly in the judgment of **Dhanalakshmi and another Vs. K.K.Velusamy** reported in **2019 (2) MWN (Civil) 707**, it is observed as follows:

"9. No prejudice will be caused to the Plaintiff in comparing these documents with that of the Promissory Note. An opportunity for the Petitioners to put forth their case is to be given. ... "

7. In the judgment of **Chinnappan and another Vs. Chinnammal** reported in **2005 (3) CTC 286**, it is observed as follows:

"12. Therefore, it is clear that the crux of the entire case rests upon the document Ex.X-1 and it is very much relied on by the plaintiff in support of her case that she is the daughter of Perumal Gounder borne through his wife Perumayee Ammal to whom admittedly, the suit properties

belonged to in view of the purchase as per the sale deeds referred to above. Inasmuch as the signatures of the second defendant, first defendant and his two sons in the said agreement Ex.X-1 and also the thumb impression of the plaintiff in that document is challenged, it is just and proper that the document is to be tested and examined by the Handwriting Expert to find out as to whether the signatures and thumb impression in the document claimed to be the signatures of the second defendant, first defendant and his two sons and the thumb impression of the plaintiff, are that of the second defendant, first defendant and his two sons and of the plaintiff. In that view, the defendants have made out their case for sending the document Ex.X-1 to the Handwriting Expert by appointing advocate-commissioner mainly for the purpose of comparing the signatures and thumb impression in the document Ex.X-1, in that the document is very much relied upon by the plaintiff to show and find out as to whether the plaintiff is the daughter of Perumal Gounder born through his wife Perumayee Ammal to whom it is alleged, the suit properties belonged to as the self-acquired properties. It follows, the dismissal of the petition by the trial Court by stating that the suit is pending for more than 7 years and therefore, there is no necessity to compare the signatures of the second defendant, first defendant and his two sons and the thumb impression of the plaintiff along with admitted signatures and thumb impression, cannot be said to be proper and the trial Court has committed an error in the approach made for dismissing the petition. Therefore, the order of the trial Court is to be set aside."

8.In the judgment of ***Palaniammal and others Vs. Palaniswami and others*** reported in ***2003-3-L.W. 649***, it is observed as follows:

"6. ... there is no bar on ban for the first appellate Court sending the documents for canvassing the expert's opinion. Under such circumstances, an opportunity has got to be given for the comparison of the documents by a handwriting expert. The Court is unable to notice any lack of bonafide, but, there was delay. The Court is of the view that the delay that was caused in making such a request before the trial Court cannot be equated to the lack of bonafide...."

9. Now applying the principles set out earlier by this Court is nothing but delay alone is not a reason for sending the document for handwriting expert. Accordingly if the petition filed by the petitioner is dismissed for the reason of delay, the same cannot be sustained.

10. On go through the other factual aspects it is admitted on either side that the case is already reserved for judgment. Only by administrative difficulties, the case was reopened and further arguments heard. In this occasion, it is appropriate to see the other one aspect that as per the case of the petitioners they received the report from the Truth Labs on 29.07.2011 itself. Thereafter till recording the plaintiff side evidence and defendants side evidence, they were not taken any steps to file the petition. I do not know what prevented the petitioner to file the petition immediately after receiving the report from the Truth Labs in the year 2011. More than that,

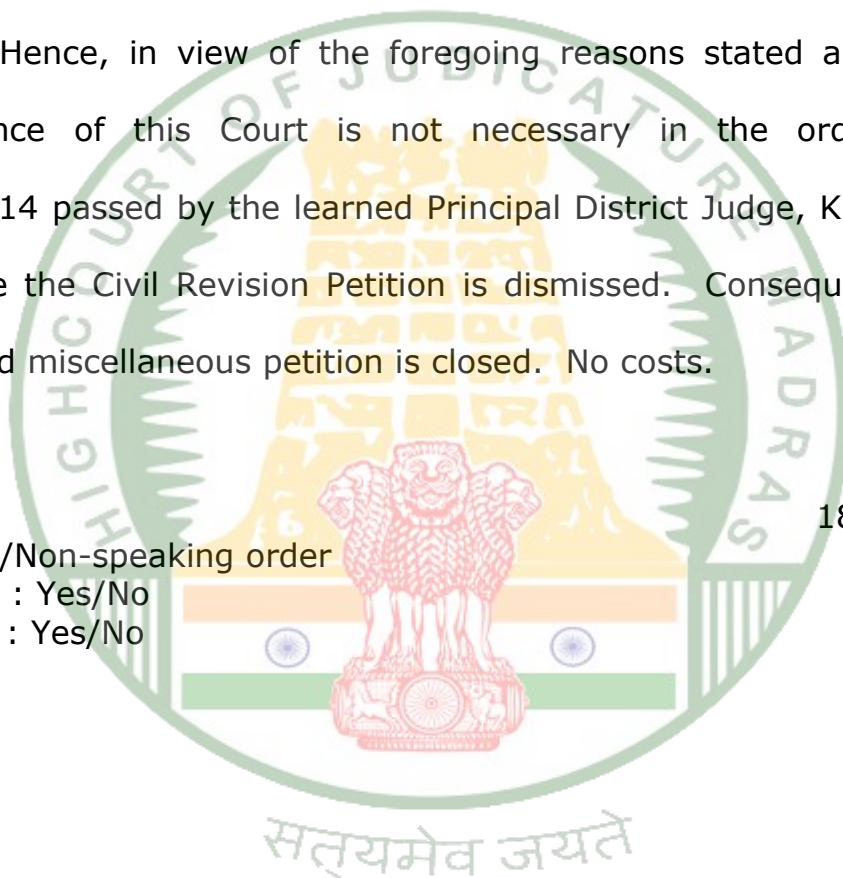
another one point it is necessary to see in this revision that according to the petitioners they received the copy of the sale agreement and gift deed dated 26.04.2010 only from the Court and then only the same was sent to the lab for chemical examination. But on close scrutiny of the said documents enclosed along with the report given by the Truth Labs, the seal of the Court is not affixed, which creates a doubt whether the alleged sale deed enclosed along with the plaint sent to the Truth Labs for chemical examination or not. Furthermore, the first petitioner being the Doctor he is an educated person. He knows the consequences of suit filed by the respondent. Even after knowing the same till attains the finality he has not taken any steps to file the petition before the trial court. Therefore, the reasons stated in the judgments relied on by the petitioners' counsel is entirely different with the factual aspects found in this case. The entire attitude and lapses found in the report given by the Truth Labs reveals the fact that the petitioners have not approached this Court now with bonafide reasons. It is observed in the judgment relied on by the petitioners' counsel that the Court itself is having the power to compare the signature. For the said circumstances if really the petitioners approached the trial court with bonafide intention they might have filed application for comparing the disputed signature with the

admitted signature. It is not known whether before filing the application, the petitioner has produced a copy of the admitted signature. So in all the attitude committed by the petitioners creates suspicious circumstances over their case.

11.Hence, in view of the foregoing reasons stated above, the interference of this Court is not necessary in the order dated 19.08.2014 passed by the learned Principal District Judge, Krishnagiri. Therefore the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

18.10.2019

Speaking/Non-speaking order
Index : Yes/No
Internet : Yes/No
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R.PONGIAPPAN,J.

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To
The learned Additional District and Sessions Court,
Hosur.



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