

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2019

CORAM

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

CRP.PD.No.4915 of 2014
and M.P.No.1 of 2014

Sadhasivam

..Petitioner

Vs.

1.Samy Sengottiyar
Saraswathi(Died)
2.Malliga
3.Thangaraj
4.Poongothai

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 10.09.2014 passed in I.A.No.258 of 2014 in O.S.No.439 of 2011 on the file of 2nd Additional District Munsif Court at Erode.

For Petitioner : Mr.V.Regunathan

For R1 : Mr.D.Gopal

For R2 to R4 : No Appearance

ORDER:

The petitioner herein is the second defendant in O.S.No.439 of 2011 on the file of the II Additional District Munsif Court at Erode.

2. Before the said court, the first respondent in this Civil Revision Petition filed a suit as against this revision petitioner and also against the Second to fourth respondents in O.S.No.439 of 2011, seeking relief of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property except under due process of law.

3. When the suit is posted for the cross examination of PW1, the petitioner herein had filed an application before the trial court under Order 26 Rule 9 of Civil Procedure Code and prayed to send his father's signature found in lease deed dated 07.02.1993 to the handwriting expert for comparing the same with the signature found in the Document dated 23.06.1990 which is also executed by his father in favour of the District Collector.

4. After affording an opportunity to the respondents herein, the learned II Additional District Munsif, Erode dismissed the application

filed by the petitioner by holding that since the petitioner herein has already sold the property under dispute in favour of the fourth defendant, there is no necessity in sending the petitioner's father's signature to a hand writing expert for comparison. Aggrieved over the said finding, the petitioner is before this Court with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioner / the second defendant would contend that since the alleged lease deed dated 07.02.1993 relied on by the plaintiff is a forged one, it is the duty upon the defendants to prove that the signature found in the said lease deed is not the signature of deceased Rathnasabapathi Gounder who is the father of plaintiff. He further added only because of the reason that the suit property was sold in favour of the fourth defendant / the fourth respondent it cannot be said that the petitioner has lost his right in respect of the suit. Hence in order to defeat the alleged statement made by the plaintiff that the lease between him and the Rathnasabapathi Gounder is in existence, it is necessary to send the lease deed dated 07.02.1993 for hand writing examination.

6. On the other hand, the learned counsel appearing for the first respondent / the plaintiff would contend that since the suit property is

an agricultural land, apart from the lease deed dated 07.02.1993, in support of claim made by him the plaintiff / the first respondent is having the receipts dated 12.02.1994 and 12.02.1995 issued by the Rathnasabapathi Gounder as document Nos.3 and 4 which are all stands in favour of the plaintiff, in support of the lease deed for proving the possession of plaintiff. Further after executing lease deed in the year 1993, sending the same for hand writing expert is unnecessary. He would further contend that under Section 73 of Indian Evidence Act, the Trial Judge is a competent person to compare the signature found in the lease deed along with the document produced by the petitioner. He has made submission that the petition filed by the petitioner / the second defendant is nothing but to protract the proceedings of O.S.No.439 of 2011.

7. Submissions made by the learned counsel on either side have been considered.

8. It is admitted on either side that originally the said property belonged to one, Rathnasabapathi Gounder. He had executed a Will in favour of the deceased respondent Saraswathi. As per the Will, the deceased Saraswathi was enjoying the suit property during her life

time. During her life time, the deceased first defendant executed gift settlement deed in favour of the second defendant and thereafter as per the settlement deed, the second defendant was in possession and enjoyment of the suit property. After some time from the date of execution of settlement deed, the fourth defendant in the suit purchased the suit property from the second defendant. The above said facts are not disputed by either side.

9. Now it is the case of the petitioner / the second defendant since he is a lessee in the suit schedule property, he should not be evicted except due process of law. On the other hand, it is the case of the second defendant that the plaintiff is not a lessee in the suit property.

10. Before the trial court in order to prove his claim, the plaintiff has produced the lease deed dated 07.02.1993 as a basic and necessary document alleged to have been executed by the Rathnasabapathi Gounder (erstwhile owner of the said property). In the said circumstances, in the written statement filed by the second defendant he averred as the alleged lease deed dated 07.02.1993 is not executed by the Rathnasabapathi Gounder and the same is forged

one. In the said circumstances, since the plea of forgery is taken by the second defendant, he has to prove that the alleged lease deed is forged one. In otherwise, in respect to the plea of forgery, he has not stated anything about the date, time in which the alleged fraud was committed.

11. Only in the said circumstances, the petitioner / the second defendant approached the trial court for sending the signature found in the lease deed dated 07.02.1993 for comparing the same with the signature found in the document dated 23.06.1990 executed by the Rathnasabapathi Gounder in favour of the District Collector.

12. In this regard, as already observed apart from the lease deed, the plaintiff has produced the receipts issued by the Rathnasabapathi Gounder pertains to the year 1994 and 1995 along with the plaint. In this regard, it is necessary to see Section 73 of the Indian Evidence Act, 1872, which reads as follows:

"73. Comparison of signature, writing or seal with others admitted or proved. In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature,

writing or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person."

13. According to the said section, the Court is having wide power to compare the signature found in the documents. More than that if the oral evidence clearly establishes that if a person executed certain document, it is unnecessary for the Court to embark upon the investigation into the signatures by comparison. Only in the circumstances sufficient material is not available to establish that a person executed certain document, it is necessary for the person claiming plea of forgery to attempt to prove the signature by way of hand writing expert. Even though comparing the signature by the Court is unsafe, considering the fact that the suit has been filed for relief of injunction, it is necessary for the plaintiff to prove his possession. If his lawful possession is proved, the other factors relied on by the other side are immaterial in respect of the case of the defendants. Now on going through the documents enclosed along with the plaint, may be evidence for his possession, all the said documents are executed in the years around 1990.

14. In the said occasion, both the counsel appearing for the petitioner and the respondents have admitted that the suit property pertains to the Civil Revision Petition is an agricultural land and in the sense each and every year there may be a chance for cultivating the same by the respective title holder or any other lessee. Since the said land is agricultural land, at the time when the same was cultivated, the revenue authorities would have definitely entered the details of cultivation in adangal extract. Accordingly after 1993, necessarily the revenue authorities would have entered the adangal extract till the year of 2014. So it is very easy for the plaintiff to obtain the adangal extract from the revenue officials and to produce the same before the trial court for his lawful possession in support of lease deed executed in favour of him by Rathnasabapathi Gounder. It is not necessary for the defendants in proving the signature found in the lease deed. The botheration is for the plaintiff to prove his case. Therefore, though the reasons stated by the trial court for dismissing the application is not in otherwise, considering the fact that the bounden duty to prove the case is with plaintiff, the attempt made by the petitioner / the second defendant is unnecessary. After denying the execution in the written statement, the burden is heavily upon the plaintiff to prove the same that the alleged lease deed is true.

15. Therefore for the forgoing reasons stated above, I am of the opinion that sending the alleged lease deed dated 07.02.1993 is not necessary for deciding the issue involved in the suit in OS.No.439 of 2011. Furthermore, if the tenancy is continued from the year 1993, necessarily the same has to be entered in the Register maintained by the Revenue Authority under the Tamil Nadu Cultivating Tenants (Protection) Act, 1955.

16. Accordingly, the revision filed by the petitioner / the second defendant is dismissed. Now on going through the other aspects, originally the suit has been filed in the year 2011. Subsequently, this revision petition has been filed before this Court in the year of 2014 and thereafter till now the suit has not been disposed of. Hence, it is appropriate to issue direction to the learned II Additional District Munsif, Erode to dispose of the suit within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

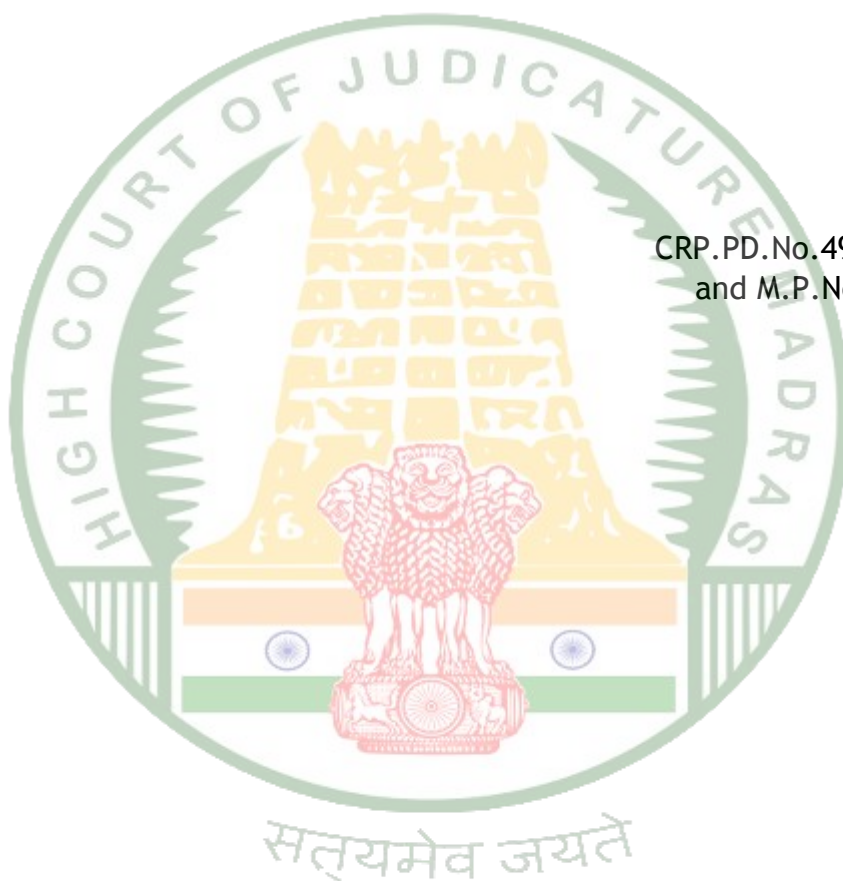
Internet : Yes/No

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R.PONGIAPPAN,J.

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To
The learned II Additional District Munsif Court,
Erode



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