



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02..12..2019
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3110 of 2019
and C.M.P.No.20385 of 2019

Balaji

... Petitioner

-Versus-

1.D.Ramesh
2.D.Govindaraj
Balambal (Died)

3.Gowri

Natarajan (Died)
4.Premakumari
5.N.Prema
6.N.Sankar
7.S.Gowri
8.Jayaprakash

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the the fair and decretal order dated 30.07.2019 made by the learned IV Additional Judge, City Civil Court, Chennai, in I.A.No.3 of 2019 in O.S.No.12175 of 2010.

For Petitioner : Mr.S.P.Arthi

For Respondent(s) : Mr.H.Adaikala Arockiaraj for
RR1 and 2

ORDER

This civil revision petition is directed against the order dated 30.07.2019 passed by the learned IV Additional Judge, City Civil Court, Chennai, in I.A.No.3 of 2019 in O.S.No.12175 of 2010 refusing to forward the disputed signature of the deceased found in the sale agreement for comparison with that of the admitted signature found in the passport issued to the deceased Udayakumar.

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2. The respondents 1 and 2 herein filed a suit for specific performance of contract of sale agreement based on a sale agreement dated 17.08.2005 said to have been executed by the petitioner's deceased father - D.Udayakumar. The petitioner, who is the 3rd defendant in the suit has filed written statement along with his mother disputing the very execution of the sale agreement by his father, as during the relevant point of time, he had been suffering from cancer and taking treatment from June 2005 to till his demise on 23.12.2005 and there was no occasion for him to execute any sale agreement as alleged by the respondents 1 and 2. That apart, his father had purchased the property in question only in the month of April 2005 and, therefore, he would not have offered to sell the same immediately after the purchase and enter into an agreement of sale. According to the petitioner, the sale agreement in question could have been created by the respondents 1 and 2 in order to grab the valuable immovable property. In order to substantiate his defence, he filed an application praying to forward the disputed signature found in the alleged sale agreement for comparison by a hand writing expert with that of the admitted signature of the deceased found in his passport which was issued in the year 2005.

3. The learned trial Judge has dismissed the application thereby refusing to forward the disputed signature for comparison and opinion by a hand writing expert on the ground that the suit was originally filed in the year 2006 and the same was subsequently decreed ex parte on many occasions due to the non appearance of the petitioner, finally, it was restored in the year 2014 and the present application for expert opinion came to be filed nearly 12 years after the institution of the suit only for the purpose of dragging on the suit. It is this order which is now under challenge in this writ petition.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and also perused the records carefully.

5. The original suit was originally filed in the year 2006 for decree for specific performance of contract of agreement for a sale said to have been executed by the father of the petitioner. The petitioner disputed the very sale agreement and contended that there was no occasion for his deceased father to execute sale agreement as he had been suffering from cancer at the relevant point of time and was taking treatment from June, 2005 to till his demise on 23.12.2005. Even though the suit was decreed ex parte on many times due to the non appearance of the



petitioner, finally, the ex parte decree was set aside in the year 2014 and the suit was posted for trial. In the above circumstances, in order to substantiate his contention that the signature found in the disputed sale agreement was not that of his father, the petitioner wanted the trial court to forward the dispute signature found in the alleged agreement of sale for comparison to the hand writing expert with that of the admitted contemporaneous signature of the deceased. The trial court, however, dismissed the application only on the ground that the application for hand writing opinion has been filed after more than 13 years of the suit only in order to drag on the proceedings. The trial court did not approach the issue on hand legally on merits.

6. Considering the fact that the petitioner/3rd defendant disputes the very execution of the sale agreement and also the fact that if the disputed signature is forwarded to the hand writing expert for comparison with the admitted signature of the deceased father of the petitioner found in the passport which is a contemporaneous document, no prejudice would be caused to the respondents 1 and 2, this court is of the view that the disputed signature could be sent to the hand writing expert for comparison and opinion.

7. At this juncture, the learned counsel for the respondents 1 and 2 would submit that the respondents 1 and 2 objected to the application for sending the disputed sale agreement for comparison of the signature of the deceased found in the sale agreement with the admitted signature of the deceased in the contemporaneous document after more than 12 years of institution of the suit. However, the counsel for the respondents 1 and 2 now submitted that the admitted signature found in the sale deed stood in the name of the deceased Udayakumar which was also in the contemporaneous period may also be taken for comparison along with the signature found in the passport issued in the year 2005 in the name of the deceased. To this, the learned counsel for the petitioner has got no objection.

8. For the foregoing reasons and in order to afford an opportunity to the petitioner to establish his defence, this court is inclined to set aside the order impugned in this revision petition.

In the result, this civil revision petition is allowed and the impugned order is set aside. The learned IV Additional Judge, City Civil Court, Chennai, is directed to forward the sale agreement for comparison of the disputed signature found in the suit sale agreement by a hand writing expert at Tamil Nadu Forensic Science Laboratory, Mylapore, Chennai 600 004 with the



admitted signatures found in the passport and in the sale deed stood in the name of the deceased Udayakumar and for opinion. The petitioner is directed to produce the passport standing in the name of the deceased Udayakumar and the respondents 1 and 2 are directed to hand over the sale deed standing in the name of the deceased Udayakumar which was said to have been handed over by the deceased at the time of the entering into the alleged agreement of sale, before the trial court within a period of one week from the date of receipt of a copy of this order for onward submission to the forensic science department. On receipt of the contemporaneous documents containing the admitted signatures, the learned Additional Judge shall forward the same along with the alleged sale agreement containing the disputed signature of the deceased in a sealed cover through an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order. The learned Additional Judge shall fix appropriate remuneration for the Advocate Commissioner to be appointed for the purpose indicated above and the remuneration shall be borne by the petitioner. The Director (Documents Division), Tamil Nadu Forensic Science Department, Chennai, is hereby directed to complete the task of comparison of the disputed and the admitted signature of the deceased as expeditiously as possible and forward his opinion directly to the learned IV Additional Judge, City Civil Court, Chennai within a period of two weeks from the date of receipt of the documents from the trial court. On receipt of opinion from the hand writing expert, the learned Additional Judge shall fix a date for trial and conclude the same within a period of four months therefrom. No costs. Consequently, connected CMP is closed.

-s/d-

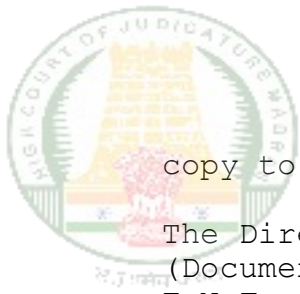
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The IV Additional Judge, City Civil Court, Chennai 600 104.



copy to

The Director
(Documents Division)
T.N Forensic Science Department
Chennai

+1 cc to M/s.H.Adaikala Arokiaraj Advocate sr100293 dt 05/12/2019
+1 cc to M/s.S.P.Arthi Advocate sr100540 dt 11/12/2019

Civil Revision Petition
No.3110 of 2019

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