

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

**C.R.P. (PD) No. 4058 and 4059 of 2018
and
C.M.P. No. 22402 of 2018**

1. Nagarathnamma

2. Veeram Muralidhar

... Petitioners
in both CRP's

-Vs-

S. Amutha

... Respondent
in both CRP's

Prayer in C.R.P. (PD) No. 4058 of 2018 : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.10.2018 passed in I.A. No. 11404 of 2018 in O.S. No. 1813 of 2007 by the learned VIII Assistant Judge, City Civil Court at Chennai.

Prayer in C.R.P. (PD) No. 4059 of 2018 : Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 25.10.2018 passed in I.A. No. 11405 of 2018 in O.S. No. 1813 of 2007 by the learned VIII Assistant Judge, City Civil Court at Chennai.

For Petitioners
in both CRP's : Mr. C.P. Sivamohan

For Respondent
in both CRP's : Ms. A. Salomi

COMMON ORDER

These Civil Revision Petitions have been filed against the fair and decretal order made in I.A. Nos. 11404 and 11405 of 2018 in O.S. No. 1813 of 2007 passed by the learned VIII Assistant Judge, City Civil Court at Chennai, by order dated 25.10.2018.

2. Before the trial Court, the revision petitioners are the defendants, against whom the respondent / plaintiff filed a suit for specific performance pursuant to the alleged sale agreement dated 18.02.2004 said to have been executed by the first defendant to and in favour of the plaintiff.

3. In the said suit, the stand taken by the defendants was that, the first defendant did not execute any sale agreement and the

alleged sale agreement dated 18.02.2004 filed by the plaintiff in the suit seeking specific performance is not at all executed by the first defendant and the signature shown in the sale agreement is not at all of the first defendant.

4. In order to prove the said stand, the defendants filed two applications before the trial Court. The first application was filed to issue subpoena to the Managing Director of the Company called "Lavender Chits Private Limited" to produce original application for enrollment submitted by the first defendant dated 19.04.2002, where the first defendant signed in two places, in order to compare the alleged signature said to have been made by the first defendant in the sale agreement dated 18.02.2004.

5. The second application was filed to appoint an Advocate Commissioner to send the said documents to be produced by the said Company to the expert for comparison of the signature and to file a report to that effect.

6. The trial Court after hearing both sides, rejected both the applications, as against which, the present revision petitions have been filed.

7. Heard Mr. C.P. Sivamohan, learned counsel appearing for the revision petitioners and Ms. A. Salomi, learned counsel appearing for the respondent.

8. The learned counsel appearing for the respondent would submit that, insofar as alleged signature in the sale agreement is concerned, it is the signature of the first defendant alone and in order to defeat the lawful claim of the plaintiff, the defendants, especially the first defendant, took a different plea before the trial Court and thereby he wanted to send the sale agreement for comparison of the signature with the contemporary documents.

9. If at all the said plea is considered, the contemporary documents should be produced only by the defendants and without

having any contemporary documents, the defendants cannot take the said stand and that the applications, since have been filed, which have been properly considered and rejected. In view of the rejection made in the first application as a consequential one, accordingly, the second application was also rejected by the trial Court of course, correctly, hence both the orders need no interference from this Court.

10. However Mr. C.P. Sivamohan, learned counsel appearing for the revision petitioners would submit that, the first defendant being a lady, during the corresponding time i.e., between 2002 to 2006, there had been no documents available with the first defendant as contemporary documents for the purpose of comparing the signature of the first defendant along with the sale agreement dated 18.02.2004 and therefore, in this regard, since the only document available with the first defendant was the copy of the application submitted to the said Company namely "Lavender Chits Private Limited" dated 19.04.2002 seeking enrollment in this regard and only a photocopy of the application is available with the first defendant as the original has been submitted to the Company, only to have the said documents as a

contemporary document, the defendants filed the first application to issue subpoena to the Managing Director of the Company. If the document is produced, no prejudice would be caused to the plaintiff.

11. Once such document is produced, he would submit that, then there can be no further impediment for the Court below to appoint an Advocate Commissioner to send those documents for comparison to the expert, therefore in allowing both the applications, there can be no prejudice on the side of the plaintiff and moreover, since the suit is for specific performance which has been laid on the strength of the alleged sale agreement dated 18.02.2004, in order to disprove the said documents i.e., in order to prove that the said documents is not a genuine one, it was her definite case before the Court below that, she had never executed the sale agreement and the signature shown in the sale agreement was not of her. Therefore, in that consideration, those two applications were filed, hence the said applications should have been allowed by the trial Court by considering the issue in proper perspective.

12. I have considered the said submission made by both sides and perused the materials placed before this Court.

13. As has been rightly pointed out by the learned counsel appearing for the revision petitioners / defendants, the main issue to be decided in the suit by the trial Court, is as to whether, the alleged sale agreement dated 18.02.2004 was genuine one or not. The stand taken by the defendants especially the first defendant, is that the signature available in the said document is not of the first defendant. In order to decide these issues, before, the main issue to be decided in this suit, the signature has to be compared with the contemporary documents and for the purpose of making available of the contemporary documents, the petitioners wanted to produce one of the documents viz., the application submitted to the "Lavender Chits Private Limited". The request made to issue subpoena to produce the documents, in the opinion of this Court, is a genuine request, which ought to have been allowed. Once the first application is allowed, consequently appointing an Advocate Commissioner to send documents for comparison for expert, also could

be allowed.

R. SURESH KUMAR, J.

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14. Since both the applications have been rejected, this Court feels that, this issue has not been considered in proper perspective hence the orders impugned herein are liable to be interfered with.

15. In that view of the matter, these Civil Revision Petitions are allowed. Consequently, connected Miscellaneous Petition is closed.
No costs.

05.11.2019

Index: Yes / No
Speaking order / Non speaking order

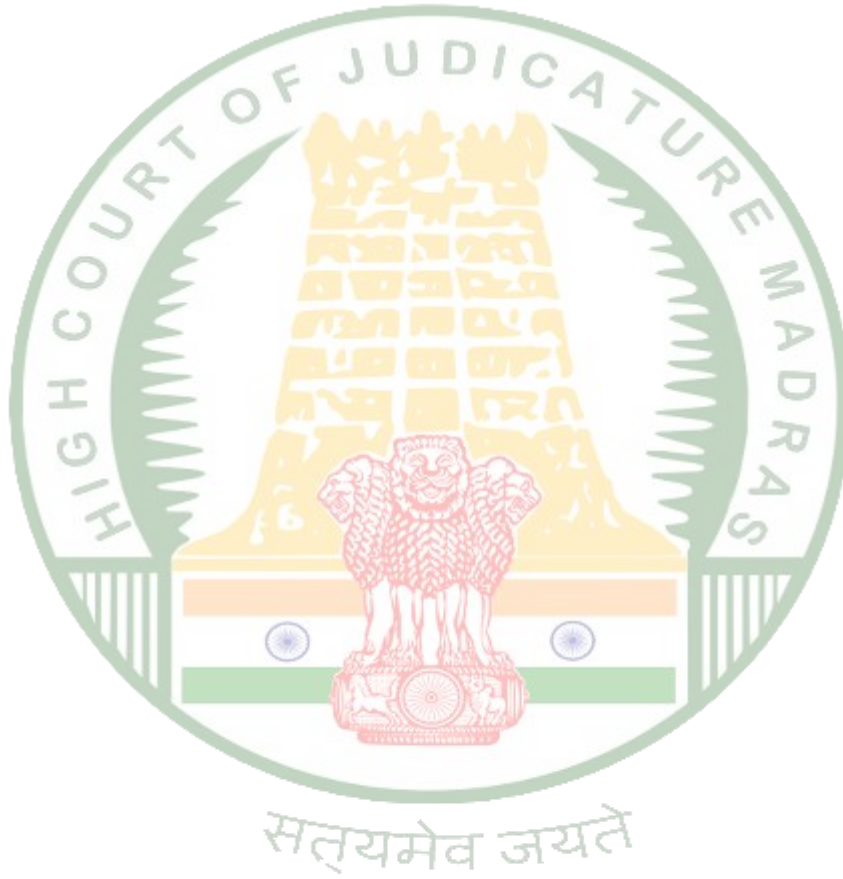
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To
The learned VIII Assistant Judge,
City Civil Court,
Chennai.

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