



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM:

THE HONOURABLE **MR. JUSTICE N.ANAND VENKATESH**

C.R.P. (MD)Nos.1175 & 1176 of 2012

and M.P. (MD)No.1 of 2012

in CRP(MD)No.1176 of 2012

Yasothai

: Petitioner in both C.R.Ps.

Vs.

1.Senthamarai

2.Senthuran

: Respondents in both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 28.02.2012 in I.A.Nos.1033 & 1036 of 2011 in O.S. No.32 of 2010 on the file of the District Munsif Judge, Muthukulathoor.

For Petitioner : Mr.J.M.Hassnul Bazari
(in both C.R.Ps.)

For R2 : Mr.M.P.Senthil
(in both C.R.Ps.)

R1-dismissed for default (in both C.R.Ps.)

COMMON ORDER

These Civil Revision Petitions have been filed challenging the order passed by the Court below permitting the plaintiff to be represented by a power agent and re-opening the case for the purpose of sending the agreement of sale for expert opinion.

2.The petitioner is the defendant. The first respondent filed a suit against the petitioner claiming for the relief of specific performance. The petitioner filed written statement. Issues were framed and the parties deposed on either side and the evidence was completed by both the parties during October 2011. Thereafter, the suit was posted for arguments on three occasions. On 06.03.2011, two applications came to be filed before the Court below. I.A.No.1033 of 2011 was filed to permit the plaintiff to be represented by power agent and I.A.No.1036 of 2011 was filed for re-opening of the case. The first application was filed on the ground that the plaintiff is living abroad and therefore, the power agent will have to continue to prosecute the suit. The second application was filed on the ground that the defendant had denied the signature in the sale agreement and therefore, the document itself has to be sent for expert opinion, to be compared



along with the vakalath filed by the defendant.

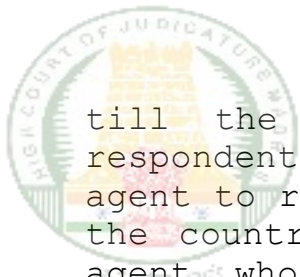
3.The Court below took up both the applications and allowed the applications by imposing cost of Rs.500/-. Both these orders are now under challenged before this Court in the present Civil Revision Petitions.

4.The learned counsel appearing on behalf of the petitioner submitted that the power agent was already examined on the side of the plaintiff as P.W.2. The case was at the stage of final arguments and therefore, there is no requirement for the personal presence of the plaintiff before the Court below and appointment of power agent, at this stage, is totally unwarranted. The learned counsel further submitted that the petitioner had already taken a stand in the written statement that the agreement of sale has been forged, however, the plaintiff did not taken any steps to send the document for expert opinion, at the initial stage and an attempt was made only when the case was at the stage of arguments. The learned counsel further submitted that signature that is found in the agreement of sale can be compared only with contemporaneous documents and the same cannot be compared with the vakalath filed by the defendant, since it is a document, which has come into existence, after the filing of the suit. Therefore, the learned counsel submitted that the Court below ought not to have allowed both the applications and the orders passed by the Court below require interference of this Court.

5.Per contra, the learned counsel appearing on behalf of the respondents submitted that the first respondent has gone abroad and he is not in a position to prosecute the case. The second respondent is the close relative of the first respondent and he is well aware about facts of the case and therefore, the second respondent was sought to be appointed as a power agent in this case. The learned counsel further submitted that the defendant has taken a specific stand that the agreement of sale has been forged and therefore, it becomes incumbent on the part of the plaintiff to send the agreement of sale for expert opinion. The learned counsel further submitted that the plaintiff is taking a chance for getting the signature found in the agreement of sale compared with the signature found in the vakalath and this cannot be questioned by the defendant. Therefore, the learned counsel submitted that the order of the Court below should not be interfered.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The first respondent, who is the plaintiff has prosecuted the suit, and has not taken any steps to get any expert opinion,



till the case reached the stage of arguments. The first respondent has filed an application for permission to appoint an agent to represent him only on the ground that he has gone out of the country and case has to be prosecuted on his behalf by the agent, who is the second respondent herein.

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8.The other petition that was filed to re-open the case on the ground that the agreement of sale has to be sent for expert opinion to be compared with the vakalath filed by the defendant.

9.Insofar as the application filed for permitting the plaintiff to be represented by a power agent is concerned, this Court does not find any purpose for filing the said application since evidence has been completed and the case was at the stage of judgment. The only reason why the plaintiff wants the case to be re-opened is to get the expert opinion on the signature found in the agreement of sale. Even if the opinion is sought for, it will be marked as Court document and there is no requirement for the plaintiff to be personally present before the Court below. Therefore, in the considered view of this Court, there is no requirement to appoint power agent to represent the plaintiff, more particularly, the agent had already been examined on the side of the plaintiff as P.W.2.

10.The defendant has taken a specific stand in the written statement to the effect that the signature found in the agreement of sale, dated 22.01.2003 is forged and the defendant never executed the said agreement in favour of the plaintiff. In view of this specific stand, the plaintiff wants the document to be sent for expert opinion. The court below has permitted the plaintiff to re-open the case for this purpose. The plaintiff is taking a chance by getting the signature found in the sale of agreement to be compared with the signature found in the vakalath filed by the defendant. In fact, by doing so, the defendant will not be put to prejudice and it is the plaintiff, who is taking a chance in this case and the ground that should have been raised by the plaintiff cannot be permitted to raised in this civil revision petition.

11.In view of the above findings, this Court is inclined to direct the Court below to re-open the case only to get expert opinion with regard to the signature found in the agreement of sale and for no other purpose.

12.This Court had already found that there is no requirement for the plaintiff to be represented by an agent, therefore, the first respondent/plaintiff is directed to file an affidavit and petition seeking for re-opening the case for the purpose of sending the agreement of sale to get expert opinion. Said



application shall be allowed by the Court below and agreement of sale along with vakalath filed on behalf of defendant, shall be sent for getting expert opinion through Advocate Commissioner. The cost shall be paid by the plaintiff. The Court below shall fix a time limit for receiving expert opinion.

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13.Immediately, after receipt of the expert opinion, the same shall be marked as Court document. The Court below shall, thereafter, considered the expert opinion along with the evidence that has already been collected in this case and come to a final conclusion. The fair and final order passed by the Court below in I.A.Nos.1033 & 1036 of 2011 is modified to the extent indicated herein above.

14.The Civil Revision Petitions are disposed of with a direction to the learned District Munsif Judge, Muthukulathoor to complete the proceedings in O.S.No.32 of 2010, within a period of three months from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

gns

To

The District Munsif Court, Muthukulathoor.

+1 CC to M/s.S.A.AJMAL KHAN, Advocate (SR-91849[F] dated 15/10/2019)

C.R.P. (MD) Nos.1175 &
1176 of 2012
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KM/ (07.11.2019) 4P 3C