



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.03.2019
DELIVERED ON : 16.04.2019

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) Nos.1568 and 1569 of 2015

1.A.M.Matilda, Rep.by Power of Attorney Holder
I.Remi Glar Shine .. Petitioners in both C.R.Ps.

Vs.

V.Rengaswamy .. Respondent in both C.R.Ps.

Prayer in C.R.P. (MD) No.1568 of 2015: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.09.2014 made in I.A.No.488 of 2014 in O.S.No.463 of 2012 on the file of the Principal District Munsif Court, Nagercoil.

Prayer in C.R.P. (MD) No.1569 of 2015: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.06.2014 made in I.A.No.120 of 2014 in O.S.No.463 of 2012 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioners (In both C.R.Ps.) : Mr.K.Rajeshwaran
For Respondent (in both C.R.Ps.) : Mr.T.Anthony Arul Raj

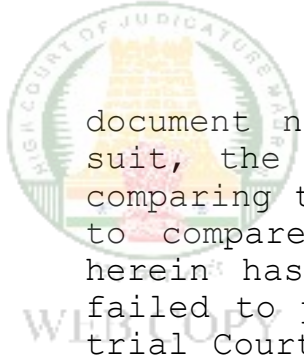
COMMON ORDER

Heard Mr.K.Rajeshwaran, learned counsel appearing for the petitioners and Mr.T.Anthony Arul Raj, learned counsel appearing for the respondents.

2.C.R.P. (MD) No.1568 of 2015 has been filed against the order passed in I.A.No.488 of 2014 in O.S.No.463 of 2012 dated 11.09.2014 on the file of the learned Principal District Munsif, Nagercoil.

3.C.R.P. (MD) No.1569 of 2015 has been filed against the order passed in I.A.No.120 of 2014 in O.S.No.463 of 2012 dated 13.06.2014 on the file of the learned Principal District Munsif, Nagercoil.

4.The petitioners herein are the plaintiffs and the respondent herein is the defendant in the suit. The petitioners filed a suit in O.S.No.463 of 2012 for a relief of declaring the



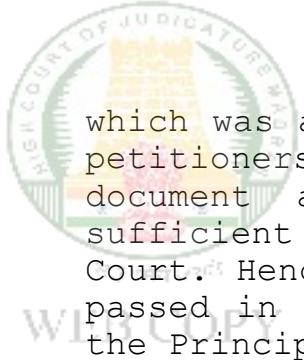
document no.3387/2002 dated 23.12.2002 as null and void. In that suit, the petitioners filed a petition in I.A.No.120 of 2014 for comparing the signature however, the trial Court has passed an order to compare the thumb impression. Against which, the petitioners herein has filed C.R.P.(MD)No.1569 of 2015. The petitioners have failed to pay the relevant fees within the time frame given by the trial Court. The petitioners filed a petition in I.A.No.488 of 2014 for extension of time limit and that petition was dismissed by the trial Court and against that order, the petitioners herein have come forward with the present petition in C.R.P.(MD)No.1568 of 2015.

5.On the side of the petitioners, it is stated that the petitioners have filed a suit for declaration and to declare the sale deed as null and void and for recovery of possession. It is stated that the respondent herein was the care taker when the plaintiffs went for treatment. The defendant created forged sale deed. The petitioners have filed a petition to sent the document to the handwriting expert to compare the signature of the disputed sale deed with the admitted signature in the sale deed of the year 2001. Though the trial Court allowed the petition, the trial Court has come to the conclusion that instead of comparing the signature, the thumb impression has to be compared. It is stated that as the signature is admitted, there is no necessity to compare the thumb impression.

6.On the side of the respondent, it is stated that the plaintiffs has filed a suit for declaring the sale deed on the ground of forgery and impersonification and that the order of the trial Court was challenged by the petitioners on the ground that it is beyond the scope of trial Court to pass an order which was not asked for. It is stated sthat the petition was filed under Section 45, 79, 151 of C.P.C., under Section 151 of C.P.C., the trial Court is having inherent power and there is nothing wrong in the order passed by the trial Court. The trial Court has clearly stated that in the interest of justice, the thumb impression should be sent for expert opinion and prayed the petition to be dismissed.

7.It is seen that the petitioners want to compare the signature in the sale deed of the year 2002 with the admitted signature of the sale deed of the year 2001. The suit was filed in the year 2012 questioning the signature in the sale deed dated 23.12.2002. The petitioners want the signature to be compared with the signature of the respondent in document No.297/2001. The Court has appointed one advocate as a Commissioner to sent a signature and thumb impression for verification. Under Section 151 of C.P.C., the trial Court is having powers to pass necessary orders in the interest of justice. The petitioners was not stated in what way he is prejudiced in comparing the thumb impression in the admitted document with disputed document.

8.The petitioner has come forward with revision petition in C.R.P.(MD)No.1569 of 2015 against an order in I.A.No.120 of 2014



which was allowed in his favour. No prejudice will be caused to the petitioners in comparing the thumb impression in the disputed document along with the admitted document. There is nothing sufficient enough to interfere in the order passed by the trial Court. Hence, C.R.P.(MD)No.1569 of 2015 is dismissed and the order passed in I.A.No.120 of 2014 in O.S.No.463 of 2012 on the file of the Principal District Munsif Court, Nagercoil is confirmed.

9.As per the order passed by the trial Court in I.A.No.120 of 2014, the petitioner has to deposit Rs.350/- towards fees for the Commissioner. Instead of paying the amount, the petitioner has filed I.A.No.488 of 2014 seeking for extension of time and that petition was dismissed by the trial Court. Against the order, the petitioner has filed the revision in C.R.P.(MD)No.1568 of 2015.

10.Considering the nature of the case and considering the fact that expert opinion will help the Court to decide the issue, it is decided that an opportunity for the petitioner to pay the Commissioner fees is to be given and the revision in C.R.P.(MD) No.1568 of 2015 is allowed and the order passed in I.A.No.488 of 2014 in O.S.No.463 of 2012 dated 11.09.2014 on the file of the learned Principal District Munsif, Nagercoil is set aside. The petitioner is directed to deposit the Commissioner fees before the trial Court within a period of two weeks from the date of receipt of copy of this order.

11.With the above direction, these Civil Revision Petitions are **allowed**. No Costs.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

To

The Principal District Munsif,
Nagercoil.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate
(SR-61392[F] dated 16/04/2019)

+1 CC to M/s.K.RAJESHWARAN, Advocate
(SR-61959[F] dated 23/04/2019)

C.R.P.(PD) (MD) Nos.1568 and 1569 of 2015

16.04.2019

mrn