



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 12.04.2019

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.2777 of 2015

and

M.P. (MD) No.1 of 2015

1.Periyasamy
2.Sundaram
3.Murugesan
4.Chandran
5.Krishnammal

.. Petitioners

Vs.

Durairaj

.. Respondent

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 12.10.2015 in I.A.No.432 of 2013 in O.S.No.100 of 2002 on the file of the District Munsif Court, Thuraiyur.

For Petitioners

: Mr.H.Lakshmi Shankar

For Respondent

: Mr.Raguvaran Gopalan

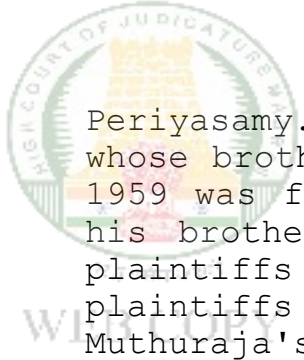
ORDER

Heard Mr.H.Lakshmi Shankar, learned counsel appearing for the petitioners and Mr.Raguvaran Gopalan, learned counsel appearing for the respondent.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.432 of 2013 in O.S.No.100 of 2002 dated 12.10.2015 on the file of the learned District Munsif, Thuraiyur.

3.The petitioners herein are the plaintiffs and the respondent herein is the defendant in the suit. The petitioners have filed a suit in O.S.No.100 of 2002 for a relief of declaration and for injunction. In that suit, the respondent herein filed a petition in I.A.No.432 of 2013 for sending the thumb impression for expert opinion. That petition was allowed by the trial Court. Against that order, the petitioner has come forward with this revision petition.

4.On the side of the petitioners, it is stated that the plaintiffs' grandfather one Chinnan Puravi got two sons namely, Periyasamy and Chinnaasamy and Veera Puravi got a son by name



Periyasamy. The first defendant's grandfather is one Veera Puravi whose brother is Periyanna. It is wrong to state that O.S.No.531 of 1959 was filed by the first defendant's grandfather Periyasamy and his brother Chinnasamy. The case was filed by the father of the plaintiffs 1 and 2 namely Periyasamy and the father of the plaintiffs 3 and 4 by name Chinnasamy. On 09.10.1967, Veerapa Muthuraja's sons namely Puravi Muthuraja and Periyaanna Muthuraja sold the property to the plaintiffs in O.S.No.531 of 1959. The sale deed was marked as Ex.B3 and Puravi has signed the sale deed. Puravi's brother namely Periyanna also has signed in the sale deed. The plaint in O.S.No.531 of 1959 was marked as Ex.B25 to prove that Puravi Muthuraja used to put the signature. Only after four years, the petitioners have come forward with the petition for expert opinion and the said petition is to be dismissed. Instead of dismissing the petition, the trial Court has passed an order to examine the thumb impression which is to be set aside.

5. On the side of the respondent, it is stated that the paternal grandfather, Chinna puravi got two sons namely Periyasamy and Chinnasamy. One Puravi Muthuraja and Periyanna Muthuraja are the sons of Veerappa Muthuraja filed a suit in O.S.No.531 of 1959. In that suit, the plaintiff has admitted that they executed a sale deed in favour of the first defendant's father Periyasamy. In that written statement, they have admitted that Puravi Muthuraja has not executed any document regarding the suit property. Puravi Muthuraja used to put his thumb impression and never signed any documents. On 12.08.1950, Veerappa Muthuraja and Puravi Muthuraja and his brother Periyanna Muthuraja jointly executed a sale deed in favour of one Ramasamy Muthuraja and that sale deed is an admitted document. In that sale deed, Veerappa Muthuraja and Puravi Muthuraja put their thumb impressions. The plaintiff has stated that Puravi Muthuraja and his brother Periyanna Muthuraja executed a sale deed on 09.10.1967 in favour of Periyasamy and the same is marked before the Court. It is stated that the grandfather of the first defendant has signed the document and that document contained the thumb impression of the executor, Puravi Muthuraja and hence, he filed the petition for comparing the thumb impression by an expert.

6. On the side of the revision petitioners, it is stated that the suit was filed in the year 2002. After letting in evidence and after 11 years, the respondent has come forward with the petition for comparing the thumb impression. It is stated that the first defendant's father filed a suit in the year 1987 and the copy of this document was marked as Ex.A6. The respondent's father depend upon this document and this document was discussed and this document was not questioned by the predecessor of the first defendant. After 60 years, now the grandson question the signature. There is an estoppel against the first defendant. It is stated that there are two other documents Ex.A25 and Ex.A26 wherein the first defendant's grandfather and his brother has instituted a suit before selling the property to the plaintiffs' father. The grandfather of the first

defendant signed the plaint in the year 1959 and all these documents are Court records and the contention of the first defendant is that his grandfather could not sign is wrong.

7. On the side of the petitioners, it is stated that if a person executed a document has not questioned the same in his life time, the son or grandson cannot question the same. In support of his contention, the Judgment passed by the this Court in the case of **Ramu Asari and 2 others v. Thirumoorthy and 11 others** reported in **2000-1-1.w. 748** is cited.

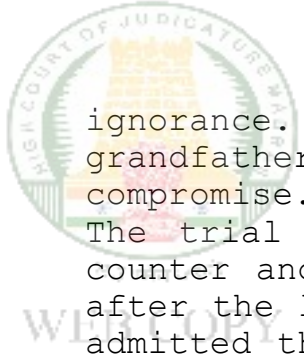
8. The learned counsel appearing for the petitioners would relied on the Judgment passed by this Court in the case of **N.Chinnasamy v. P.S.Swaminathan** reported in **2006 (4) CTC 850**, which reads as follows:

"When the document namely, the sale agreement dated 15.02.1994 was disputed by the defendant the onus was shifted to plaintiff only to prove that the sale agreement dated 15.02.1994 is a genuine document.

35. But the defendant filed I.A.No.1531 of 2014 on 19.10.2004 under Section 45 of the Indian Evidence Act to examine the sale agreement dated 15.02.1994 by a handwriting expert. The trial Court dismissed this application on the ground that the application was a belated one, no document containing the admitted signature of the defendant was filed along with the application and it is filed along with the application and it is for the plaintiff to prove that the sale agreement dated 15.02.1994 is a genuine document which was signed by the defendant. These reasons were assailed by the learned counsel for the revision petitioner/defendant by relying on the decisions above referred to."

9. On the side of the respondent, it is stated that in the written statement, the respondent denied both the earlier cases. As the grandfather of the respondent is an illeterate, the signature is denied in the counter and that the document in the year 1950 is admitted and the contention raised by the revision petitioners in the counter is that when the predecessor accepted the document, there is no necessity to compare the same. Two reasons are stated in the counter. One is that the burden is upon the plaintiffs and it is not on the first defendant. Another is that the entire case depends on this document. The first defendant has denied all the transactions. By sending the documents for expert opinion, the first defendant is taking the risk and no prejudice will be caused to the revision petitioners. There is no bar in law for the first defendant to sent a document for opinion.

10. On the side of the petitioners, it is further stated that in the written statement, the first defendant has not raised a plea regarding the illiteracy of his grandfather and that he claimed only



ignorance. There is no specific denial as to the signature and the grandfather of the first defendant and his brother entered into compromise. This documents are pertaining to a Court proceedings. The trial Court has failed to consider the points raised in the counter and the first defendant cannot be allowed to meet the case after the lapse of 11 years. When the father of the first defendant admitted the document, there is no necessity for the Court to sent those document for comparison. Another document executed by Puravi Muthuraja dated 12.08.1950 was filed by the respondent wherein Puravi Muthuraja put only his thumb impression and he has not signed in the document. In the sale deed dated 09.10.1967 also, Puravi Muthuraja has put only his thumb impression.

11.It is seen that in the plaint and in the compromise petition, Puravi Muthuraja has put his signature. Though the first defendant has filed this petition denying the signature of his grandfather, an opportunity for the petitioners is to be given. No prejudice will be caused by sending the document for expert opinion. The plaintiff has admitted that Puravi Muthuraja has put his thumb impression in sale deed dated 09.10.1967.

12.In the above circumstances, comparing the thumb impression will not in any way prejudice the rights of the revision petitioners. Hence, there is no necessity to interfere in the impugned order passed by the trial Court. This Civil Revision Petition is **dismissed** by confirming the order passed in I.A.No.432 of 2013 in O.S.No.100 of 2002 dated 12.10.2015 on the file of the learned District Munsif, Thuraiyur. No Costs. Consequently, M.P.(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The District Munsif, Thuraiyur.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate SR-64836.

C.R.P. (PD) (MD) No.2777 of 2015
30.04.2019

CS: (07/06/2019) 4P 3C