



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:22.11.2019

Coram:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (PD)MD.No.1190 of 2019

and

C.M.P (MD)No.6625 of 2019

WEB COPY

Arumuga Perumal ... Petitioner / 1st Respondent/Plaintiff

.vs.

1.Muniasamy

...1st respondent/Petitioner/1st defendant

2.The Corporation Commissioner,
Corporation Office,
Rajapalayam Town - 626 117,
Virudhunagar District.

3.K.Gurusamy Raja

Damayandi (died)

4.K.Murugesu Raja

5.R.Srirenga Raja

6.P.S.Radha

7.G.Raghurama Raja

8.R.Deepa

9.G.Rathinam

10.M.K.Jeganatha Raja

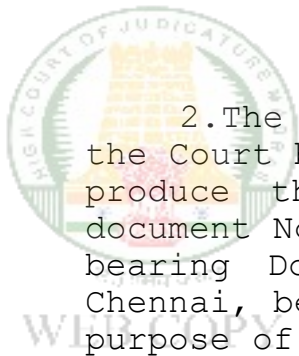
.. Respondents/Respondents/Defendants 2 to 11

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.02.2019 passed in I.A.No.281 of 2016 in O.S.No.146 of 2009 by the Principal District Court, Srivilliputhur, Virudhunagar District, allowing the I.A., for appointing an Advocate Commissioner.

For Petitioner	: Mr.V.R.Venkatesan
For First Respondent	: Mr.P.Arun Jayatram
For Respondent No.2	: Mr.N.Dilip Kumar

ORDER

The present Civil Revision Petition has been filed challenging the fair and decreetal order dated 25.02.2019 passed in I.A.No.281 of 2016 in O.S.No.146 of 2009 by the Principal District Judge, Srivilliputhur, Virudhunagar District.



2.The first respondent herein filed I.A.No.281 of 2016 before the Court below to appoint an Advocate Commissioner directing him to produce the original sale agreement dated 12.02.2009 filed as document No.18 along with General Power of Attorney dated 07.07.2009 bearing Document No.403 of the Sub-Registrar Office, Royapuram, Chennai, before the Government Forensic Laboratory, Madurai, for the purpose of comparing the admitted signature of the petitioner in the said application, in the said General Power of Attorney with the disputed signature in the said sale agreement by a Scientific Handwriting Expert and to get his report with all his annexures and photos and produce them before the Court below, within the time as may be fixed by the Court.

3. The Court below after considering the submission of both the parties, passed an order appointing an Advocate Commissioner as prayed for in the above application holding that the Expert opinion is just and necessary in the present case by comparing the admitted signature with the disputed signature in order to give proper finding in this case.

4. Challenging the said order, the revision petitioner has filed the present Civil Revision Petition.

5. The learned counsel for the petitioner would contend that the suit was filed in the year 2009, whereas the present application in I.A.No.281 of 2016 has been filed for the comparison of the signature and to get expert opinion, only in the year 2016. In other words, after a lapse of seven years, the present application has been filed. Therefore, the learned counsel would contend that though this point has been raised before the Court below, the Court below completely rejected the submissions of the revision petitioner and allowed the said application.

6. The learned counsel for the petitioner would further contend that the first respondent also filed I.A.Nos.4 and 5 of 2017 in I.A.No.281 of 2016 in O.S.NO.146 of 2009. The said applications have been dismissed by the Court below vide its order dated 25.07.2018. The said applications were filed to reopen the case in I.A.No.281 of 2016 for the purpose of receiving additional evidence and to summon the Sub-Registrar, Rajapalayam, Virudhunagar Registration District, to produce document before the Court below.

7. The learned counsel for the petitioner further submits that in the said applications, as stated above, the Court below passed a common order dated 25.07.2018 stating that when the first respondent herein filed the application in I.A.No.281 of 2016, it is not necessary to summon once again some other document to produce it in I.A.No.281 of 2016, since already in I.A.No.281 of 2016, the first respondent herein filed a General Power of Attorney, wherein he has admitted the signature, to compare the same with the disputed signature in the alleged sale agreement. In these circumstances,



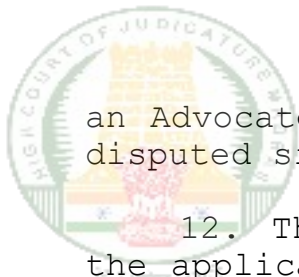
the Court below dismissed the said application as the same is not necessary.

8. Therefore, the learned counsel for the petitioner would contend that when I.A.Nos.4 and 5 of 2017 have been dismissed stating that it is not necessary for the Court to allow these applications for the reasons stated therein, the Court below ought not have allowed I.A.No.281 of 2016 on 25.02.2019 after a period of seven months time. His main contention is that when the applications in I.A.Nos.4 and 5 of 2017 were dismissed, the Court below should have dismissed I.A.No.281 of 2016. Therefore, he would contend that without application of mind, the Court below allowed the presnet application.

9. Hence, the learned counsel submits that in the present case, there is no need for sending the signatures for the handwriting experts and on the other hand, the same can be compared with naked eye as per the provisions of the Indian Evidence Act, 1872 as the said Act permits the Judicial Officers to compare the signatures with naked eye. Further, he would contend that there are attesting witnesses available and the attesting witnesses can be examined and if at all the first respondent intended to dispute the signature in the sale agreement, that can be proved by way of examining the attesting witnesses. But, without doing such acts, the first respondent herein filed an application for the comparison of the signature with the admitted signature, which is totally unwarranted. Therefore, the order passed by the Court below is liable to be set aside.

10. The learned counsel appearing for the first respondent per contra would contend that in the present case, suit in O.S.No.146 of 2009 has been filed by the petitioner herein against these respondents for specific performance based on the sale agreement dated 12.02.2009.

11. The learned counsel would further contend that in the suit, the trial is not yet commenced. The first respondent herein filed a written statement stating that the suit sale agreement dated 12.02.2009 produced as plaint document No.18 is a forged document and the signature of the first respondent in the sale agreement is not really his signature and the revision petitioner along with his abettor has created the sale agreement by falsely putting the signature. Therefore, upon obtaining the legal advice, he has filed the application for the comparison of the admitted signature with the disputed signature. Further, he would contend that since he has made a categorical denial about the signature in the suit document no.18, it is for the plaintiff to prove the said document, which known to law. However, he has not taken any steps to compare the disputed signature with the admitted signature by getting opinion from a Handwriting Expert. In these circumstances, since the plaintiff had not taken any steps to get the expert opinion, the



an Advocate Commissioner to get the expert opinion by comparing the disputed signature with the admitted signature.

12. The learned counsel would also contend that after filing the application in I.A.No.281 of 2016, in order to support the case in I.A.No.281 of 2016, the first respondent has filed I.A.Nos.4 and 5 of 2018 to re-open the case and to summon the Sub-Registrar, Srivilliputhur, to produce document before the Court below. The said applications were dismissed by the Court below due to the reason that already in I.A.No.281 of 2016 the first respondent herein filed a Power of Attorney, wherein he has admitted the signature to compare the same with the disputed signature in the alleged sale agreement. Therefore, the Court below was of the view that it is not necessary to once again reopen the petition and to summon the sub-Registrar, Srivilliputhur. Because, the Court below dismissed I.A.Nos.4 and 5 of 2018, the submission of the revision petitioner that I.A.No.281 of 2016 is supposed to have been dismissed, is totally incorrect. Therefore, the revision petitioner cannot take the plea taking advantage of the dismissal of I.A.Nos.4 and 5 of 2018. Hence, he would contend that the Court below by applying the settled principle of law and after considering all the facts and circumstances of the case, allowed the application and appointed the Advocate Commissioner as prayed for.

13. Further, the learned counsel for the first respondent would submit that the revision petitioner herein is a tenant and the first respondent, has leased out his two properties to two tenants and each tenant has created a sale agreement as it was executed on 12.02.2009 and these tenants each other signed in the respective sale agreement as attesting witnesses. Therefore, even assuming that the attesting witness has been examined, the truth will not come out. Even both the attesting witnesses are instrumental for forging the sale agreement. Therefore, it is just and necessary to appoint an Advocate Commissioner, to come to an independent opinion by the Court on the basis of the opinion of the Handwriting Expert. Therefore, there is no need for interfering with the order passed by the Court below.

14. Heard the learned counsel appearing on either side and perused the materials available on record.

15. In the present case, the suit was filed for specific performance by the revision petitioner. According to the revision petitioner, the first respondent herein executed a sale agreement dated 12.02.2009. The first respondent herein also filed a written statement. Admittedly, in the written statement, the first respondent herein disputed the signature in the alleged sale agreement dated 12.02.2009.

16. It is also an admitted fact that the revision petitioner is a tenant of the first respondent and the first respondent



leased out the property to the revision petitioner. He has not only leased out a property to the revision petitioner, but also to another tenant and other tenant also filed another suit by forging the signature of the first respondent and in this regard, the first respondent also filed application for appointment of an Advocate Commissioner, wherein the Court below appointed an Advocate Commissioner and against which also Civil Revision Petition is filed. Since one of the respondents was passed away, the said CRP is not posted along with this matter.

17. It is seen that the present revision petitioner is an attesting witness in the other suit and the plaintiff in the other suit is an attesting witness to the present suit. Therefore, the attesting witnesses are said to have been instrumental for forging the signature of the first respondent. Under these circumstances only, the Court below came to the conclusion that even after examination of the witnesses also, the truth will not come out. After taking into consideration all these aspects, the Court below appointed the Advocate Commissioner to compare the admitted signatures along with disputed signature and to get the report of the expert.

18. As contended by the first respondent, the purchaser to the sale agreement and one of the attesting witnesses of the sale agreement have involved in the forgery of the signature in the sale agreement and therefore, there is nothing wrong in the finding of the Court below sending the admitted signature as well as the disputed signature to the Handwriting Expert by appointing an Advocate Commissioner.

19. In view of the above, this Court is of the considered view that the Court below after taking into consideration all these facts has come to the conclusion that it is just and necessary to appoint an Advocate Commissioner to get the report of the expert.

20. Therefore, the Court below has provided a well reasoned order and the same need not be interfered by this Court and accordingly, this Court is not inclined to interfere with the order and therefore, the well reasoned order passed by the Court below is confirmed and the CRP is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



pm

To

The Principal District Judge,
Srivilliputhur,
Virudhunagar District.

+1 CC to Mr.P. ARUN JAYATRAM, Advocate (SR-101351[F] dated
26/11/2019)

C.R.P (MD) No.1190 of 2019
22.11.2019

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