



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE K. RAVICHANDRABABU

C.R.P. (PD) (MD) Nos. 1519 and 2408 of 2013

and

M.P (MD) Nos. 1 and 1 of 2013

Vijayakumar ..Petitioner in both petitions/petitioner/plaintiff
-vs-

1.Ramayyan
2.Mariaselvi

.. Respondents in both petitions/Respondents/
Defendants 1 and 2

COMMON PRAYER : Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal orders dated 27.06.2013 made in I.A.Nos.210 and 143 of 2013 in O.S.No.179 of 2013 respectively on the file of the District Munsif, Kuzhithurai.

In C.R.P (MD) No.1519 of 2013:

For Petitioner : Mrs.J.Anandhavalli

For Respondents : Mr.P.Prabhakaran

In C.R.P (MD) No.2408 of 2013:

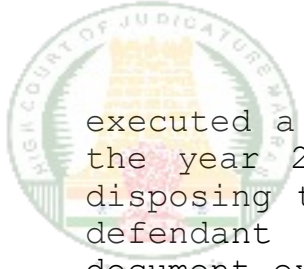
For Petitioner : Mrs.J.Anandhavalli

For Respondents : No appearance

COMMON ORDER

Both the civil revision petitions are filed by the plaintiff in O.S.No.179 of 2011 on the file of the Principal District Munsif, Kuzhithurai, aggrieved against the order passed in I.A.Nos.210 of 2013 and 143 of 2013 both dated 27.06.2013.

2.The petitioner, as the plaintiff, filed the said suit for specific performance to enforce the agreement of sale deed, dated 05.02.2011, alternatively, the plaintiff prayed for award of compensation of Rs.25,000/- with interest. The first defendant disputed the signature found in the suit agreement, dated 05.02.2011. Consequently, the first defendant took out an application in I.A.No.179 of 2011 to send the said agreement of sale, dated 05.02.2011, along with a document No.615/1987, containing his admitted signature, for expert opinion. The said I.A was dismissed on the reason that Document No.615/1987 was older than the agreement of sale dated 05.02.2011 and therefore, it is not a good sample for comparison. The first defendant preferred CRP(PD) (MD) No.1654 of 2012 before this Court, which came to be disposed of on 23.11.2012, wherein it was represented before this Court by the learned counsel for the first defendant that the first defendant has



executed a registered document in favour of the second defendant in the year 2011. Taking note of such submission, this Court, while disposing the said civil revision petition, observed that the first defendant could take steps to summon, through Court, the said document executed in the year 2011 and the lower Court shall do well to see that an expert's suggestion is taken. Consequently, the first defendant filed I.A.No.143 of 2013 to appoint an Advocate Commissioner to receive expert's report from the Forensic Science Department in respect of the disputed signature in the sale agreement dated 05.02.2011 with admitted signature of the sale deed, dated 09.03.2011.

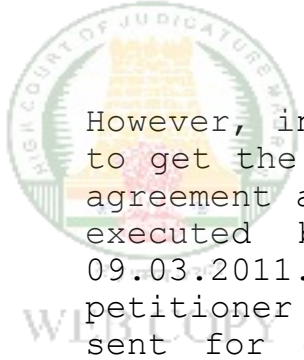
3.The plaintiff also filed I.A.No.210 of 2013 to direct the first defendant to produce documents containing signature other than the one dated 09.03.2011 to be sent for expert's opinion. The trial Court dismissed I.A.No.210 of 2013 and allowed I.A.No.143 of 2013. Challenging the said orders, the present civil revision petitions are filed before this Court.

4.The learned counsel for the petitioner contended that since the sale deed was executed by the first defendant in favour of the second defendant after the suit, the said document cannot be relied on to compare the signature of the first defendant in the agreement of sale dated 05.02.2011. Therefore, she contended that some other document of the year 2011 must be sent for comparison.

5.On the other hand, the learned counsel appearing for the first defendant submitted that since this Court has granted liberty to the first defendant to summon the said document, namely, the sale deed dated 09.03.2011, the plaintiff cannot object to the same.

6.Heard both sides.

7.The suit is for specific performance. The first defendant who is said to have executed the suit agreement in favour of the plaintiff, is disputing the signature. The agreement is dated 05.02.2011. Earlier, the first defendant sought to get expert's opinion by relying on a document of the year 1987 which was negatived by the trial Court and confirmed by this Court in CRP(MD) No.1654 of 2012. However, at the time of disposing the said Civil Revision Petition, it was represented by the learned counsel for the first defendant that during the year 2011, the first defendant executed registered document in favour of the second defendant. Taking note of such statement, this Court admittedly granted liberty to the first defendant to take steps to summon through Court the said document for comparison of the signatures. When such liberty is granted to the first defendant, I do not think that the plaintiff can object the same by contending that the plaintiff is not aware of the fact that the document sought to be sent for comparison is a document of sale executed by the first defendant in favour of the second defendant, that too, in respect of suit property. Needless to say that the plaintiff having filed the suit for specific performance and when the first defendant has disputed his signature, it is the bounden duty of the plaintiff to prove the suit agreement.



However, in this case, the first defendant himself has come forward to get the expert's opinion in respect of the signature in the suit agreement and for which purpose, he has also referred the sale deed executed by him in favour of the second respondent, dated 09.03.2011. When such being the fact, I do not think that the petitioner is prejudiced in any manner, if the suit agreement is sent for comparison with admitted document of sale deed, dated 09.03.2011. However, if the plaintiff still has an apprehension, it always open to him to file application to sent for some other documents for comparison. The learned counsel for the petitioner, at this juncture, submitted that instead of filing such an application, this Court itself can issue direction to the Court below to summon other documents filed before the registering authority containing the signature of the first defendant at the time of registering the sale deed, dated 09.03.2011. Needless to state that summoning of those documents is not going to cause any harm or hardship to the first defendant, as admittedly he has executed the sale deed, dated 09.03.2011, in favour of the second defendant. Therefore, these Civil Revision Petitions are disposed of in the following terms:-

"(a) the trial Court will summon the other documents or forms signed by the first defendant and presented before the concerned registering authority for registering the sale deed, dated 09.03.2011, executed by him in favour of the second defendant.

(b) after summoning those documents, the trial Court will send the agreement of sale, dated 05.02.2011, for expert's opinion to be compared along with the sale deed, dated 09.03.2011 and other documents summoned from the registering authority as directed supra.

(c) the whole exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order."

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif, Kuzhithurai.

+2ccs to M/s.J.Anandhavalli, Advocate, SR.Nos.72095 and 72096

+One cc to M/s.P.Prabhakaran, Advocate, SR.NO.71937

C.R.P. (PD) (MD) Nos.1519 and 2408 of 2013
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