

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 06.11.2020]

[ORDERS PRONOUNCED ON : 30.12.2020]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP (PD).No.3960 of 2019

and

C.M.P.No.26108 of 2019

P.Indiran

...Petitioner

.. Vs ..

1.M.Balakrishnan
2.B.Rangamani
3.B.Lakshmanapathi
4.B.Deenadaylan

...Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.08.2019 in I.A.No.523 of 2017 in O.S.No.17 of 2009 on the file of the Principal Subordinate Judge, Chengalpattu.

For Petitioner

: Mr.Ravikumar Paul
Senior Advocate
M/s.Paul and Paul
J.Hudson Samuel and Partners

For R1 to R3

: Mr.S.Ramesh

For R4

: No appearance

ORDER

The petitioner/plaintiff filed a suit for declaration of title in O.S.No.17 of 2009 before the learned Principal Sub-Judge, Chengalpattu.

2. The petitioner is the plaintiff in the main suit. In the above suit though the petitioner/plaintiff has claimed his title under the registered Sale Deed dated 20.11.2007 executed by A.K.Sameem, he has relied upon the registered Sale Deed dated 07.07.2006 executed by Janakiammal in favour of A.K.Sameed along with the Patta in the name of Janakiammal bearing No.388. In turn, the registered Sale Deed dated 29.06.2000 executed by Venugopal Naicker in favour of Janakiammal is also relied upon as the parent document of title to the larger extent of land and the said Venugopal Naicker referred to be in possession of the property in support of Patta issued in his name.

3. On probing into the subject matter, the said Venugopal Naicker was given possession of the said property by the 1st defendant and his brother Shanmugam under the unregistered possessory Mortgage Deed dated 05.06.1970 was placed before this Court and on payment of

stamp duty penalty payable over the said document, the same is considered to be Ex.A12. After seeing the said document i.e., Ex.A12, the 1st defendant has taken a stand of denying the execution of the same.

4. The present application filed by the petitioner/plaintiff under Order 26 Rule 10(a) of C.P.C r/w Section 45 of Indian Evidence Act, praying to appoint an Advocate Commissioner to take custody of Ex.A12 along with the documents and records carrying the admitted signatures of the 1st defendant available before this Court along with certified copies of two Sale Deeds, filed along with the present application executed by the 1st defendant joining with his brother Shanmugam, who have executed Ex.A12, for submission of the same before the Forensic Laboaratory, Egmore, Chennai - 600 008 for comparison of signatures and to get the Expert's Report.

5. In the counter, the respondent/defendant has submitted that in the additional written statement filed by the 1st respondent, they have stoutly denied the execution of the alleged Mortgage Deed dated 05.06.1970. Inspite of denial the petitioner has not taken any action to prove the alleged Mortgage Deed dated 05.06.1970 till the case is posted for arguments. Ex.A12 is an unregistered document and it is admissible

document. The said application was dismissed and hence, the present Civil Revision Petition.

6. Heard both sides.

7. On perusal of the plaint and written statement and the additional written statement, it is seen that the petitioner has claimed his title by relying upon the registered Sale Deed dated 29.06.2000 executed by Venugopal Naicker in favour of Janakiammal as the parent document of title to the larger extent of land. The said Venugopal Naicker was given possession of the said property by the 1st defendant and his brother Shanmugam under the unregistered possessory Mortgage Deed dated 05.06.1970 which was marked as Ex.A1.

8. In the case on hand, the petitioner has marked the Mortgage Deed dated 05.06.1970 alleged to be signed by the 1st respondent/1st defendant, upon which he traces his title to the suit property. The admitted signatures of the 1st respondent/1st defendant before this Court are not related to the period of execution of the above said Mortgage Deed dated 05.06.1970.

9. The trial Court has observed that in the petition, the defendants have marked only the certified copies and only mentioned as

2 Sale Deeds. No date or year of execution has been mentioned in the petition. Further, the petitioner has not referred to any particular document containing admitted signatures of 1st respondent/1st defendant before this Court, for comparison.

10. The signatures in the certified copies, that too the documents which are not related to the period of signature found in Ex.A12, cannot be taken into consideration for comparison and rejected the prayer.

11. After hearing the submissions and also the decision relied upon the learned Senior Advocate in (2016) 2 CTC 481 (FB) of Andhra Pradesh of High Court wherein it is held that:

(i) whether the Court would be barred from sending the disputed handwriting/signature to an expert if the time gap between the admitted signature and the disputed signature was very long.

(ii) Whether contemporaneity of signatures was an essential pre-requisite for the Court to direct comparison thereof for expert opinion.

(iii) Whether a Civil Court may not send a disputed handwriting/signature to a handwriting expert (under Section 45 of the Evidence Act) if the time gap between the admitted signature and the disputed signature is very large.

Contemporaneous means occurrence at same period of time. No specific measure could be assigned to the element of contemporaneity. One of the famous book Scientific Examination of Questioned Documents, states that material written two or three years before or after the disputed writing serve as satisfactory standards.

....e) The gist of the experts opinion, emerging from the above report, is to the effect that it is not always necessary to have contemporaneous handwritings/signatures for comparison. However, as a general rule, it would be desirable to undertake comparison of admitted handwritings/signatures with disputed handwritings/signatures which fall within the range of 2 or 3 years from each other. Therefore,

(i) there can be no hard and fast norm as to when comparison can or cannot be undertaken owing to the time lag between the two sets of handwritings/signatures. Various other factors would have to be taken into consideration, as opined by the experts, quoted herein before.

(2) Each case would turn upon its own facts and circumstances relating to the time lag, the change in the handwriting/signature, the capability of correlating the two set and ultimately, the opinion of the expert himself as to whether the two sets can be compared.

(3) It is therefore not open to the Court to refuse to entertain an application seeking comparison of disputed handwritings/signatures with admitted handwritings/ signatures on the ground of a long lapse of time between the two sets of handwritings/signatures.

f) There are many factors which have to be taken into consideration in effecting a comparison of the two signatures, and although a Court could apply its own eyes and its own mind to determine whether a particular signature is resembling another it would be going beyond the ordinary limits of the capacity of a Court to constitute itself as a Handwriting Expert and try to compare the signature without all the gadgets and devices which are available to a Handwriting Expert, besides the lack of expert knowledge which a Handwriting Expert possesses.

g) No time could be fixed for filing applications under Section 45 of the Indian Evidence Act for sending the disputed signature or writings to the handwriting expert for comparison and opinion and same shall be left open to the discretion of the Court, for exercising such discretion when exigencies so demand, depending upon the facts and circumstances of the each case.

h) It may however be noted that an expert opinion under Section 45 of the Act of 1872 is not binding on the Court as it is only advisory in nature. Whether such an opinion should be admitted and how much weight should be given to it are aspects which would ultimately lie within the domain of the Court, as evidence of an expert is liable to be interpreted like any other evidence.

i) It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek expert opinion as to the comparison of the disputed handwriting/signature with the admitted handwriting/signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred from sending the disputed handwriting/signature for comparison to an expert merely because the time gap between the admitted handwriting/signature and the disputed handwriting/signature is long.

12. After going through the decision of the Full Bench of Andhra Pradesh High Court, I fully concur with the view expressed by the Hon'ble Full Bench in this regard.

13. On perusal of the docket entries in the I.A, I find that on 07.01.2015, Ex.A12 was marked. The said document was denied by the

1st defendant even before it could be marked as Ex.A12 i.e., in the year 2012 at the stage when the plaintiff has brought in the said document along with the other documents in I.A.No.358/2012 before this Court. The suit is now in the stage of defendants' side evidence.

14. Since the petitioner/plaintiff has filed a suit for declaration of his title basing upon the sale deed which in turn basis upon the two sale deeds and ultimately rested with the unregistered possessory Mortgage Deed dated 05.06.1970 wherein the defendant alleged to have signed the signature and the said signature is now sought to be compared with that of the sample signature. The defendant has not produced any documents much less contemporary document for signature and hence, the petitioner has filed the above I.A.

15. In view of the decision has held in the above said citation that the delay in filing the application for comparison of signature will not be debarred the claim of the petitioner.

16. Considering the facts and circumstances of the case that too with regard to possessory nature of the alleged document and the lis between the parties rested upon Ex.A12 wherein the unregistered possessory Mortgage alleged to have been signed by the defendant. The

defendant has disputed the signature in the additional written statement. Though a contemporary document was not forthcoming from the defendant, the petitioner manage to collect two sale deeds which are admittedly executed by the defendants and the same is sought to be compared and hence, I find that a scientific method of comparison of signature will ail and assist the Court in coming into the Court about the truth and genuinity of Ex.A12. Based upon which the entire plaintiff's case has rested.

17. Since Ex.A12 is the main plank of the plaintiff's case, I find that it is just and necessary with the signature has to be compared along with the sample sale deed and hence order dated 29.08.2019 made in I.A.523/17 is set aside and I.A.523/2017 is allowed.

18. The trial Court is directed to appoint an Advocate Commissioner to send these documents with a direction the scientific report has to be completed. The process of getting the scientific report to be completed within a period of eight weeks. The trial Court is directed to dispose of the suit within a period of 3 months from the date of receipt of a copy of the scientific report.

19. With the above directions, this Civil Revision petition is allowed. No costs. Consequently, connected C.M.P is closed.

30.12.2020

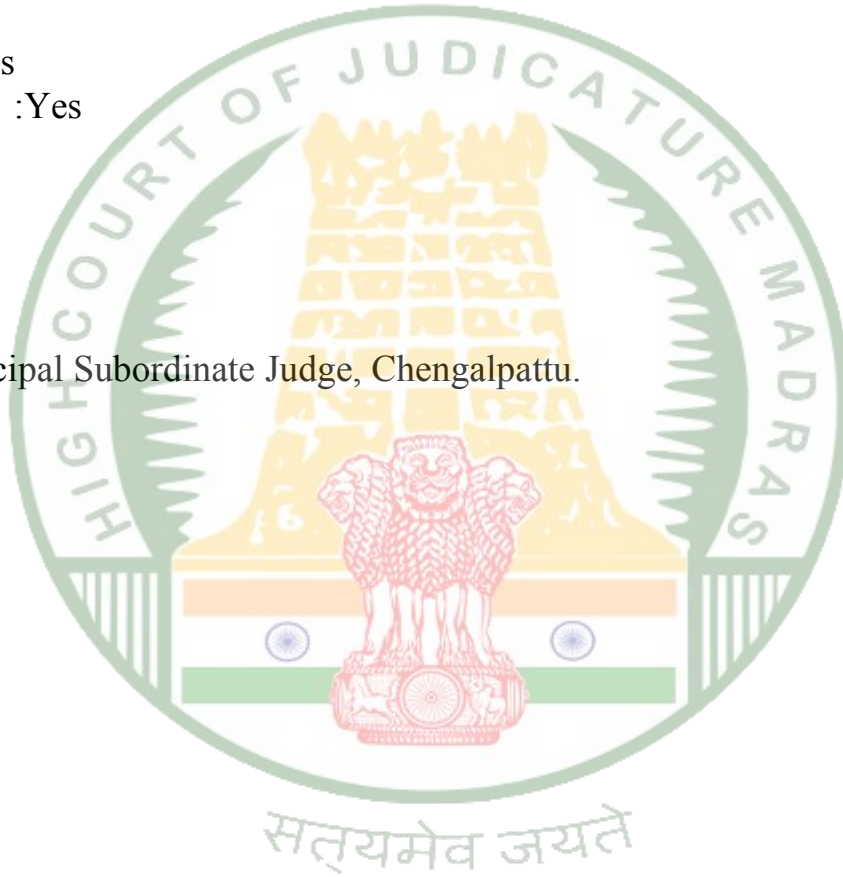
Index:Yes

Internet :Yes

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To

The Principal Subordinate Judge, Chengalpattu.



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RMT.TEEKAA RAMAN, J.

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Order made in
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