

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD).Nos. 3067 & 3069 of 2018

1.C.Muthusamy
2.Thamayanthi

...Petitioners in both CRPs

Vs.

1.Erode Handloom Cloth Merchants
Association rep. By its President
2.Erode Cloth Merchants Association,
Rep. By its President,
3.C.B.Gunasekaran
4.P.Ravichandran
5.S.Kandasamy

...Respondents in both CRPs

Prayer in both CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.08.2018 made in I.A.Nos. 425 & 426 of 2018 in O.S.No. 401 of 2014 on the file of the learned Principal District Munsif Court, Erode.

For Petitioners in both CRPs: Mr.N.Manokaran

For Respondent in both CRPs : Mr.V.S.Kesavan

C O M M O N O R D E R

The plaintiffs in O.S.No. 401 of 2014, aggrieved by an order passed in I.A.Nos. 425 & 426 of 2018 summoning certain documents from the Sub-Registrar's Office and for appointing a Commissioner to take the documents along with the Varthamanam letter dated 15.05.1995 to the government forensic expert for comparison of the signatures found therein with the admitted signatures of the plaintiffs have come up with this revision.

2. The suit in O.S.No. 401 of 2014 has been filed by the plaintiffs seeking a declaration that the sale deeds dated 10.05.2013 executed by the first defendant in favour of the defendants 2 and 3 and registered as document numbers 2637 & 2638 of 2013 are null and void, consequential permanent

injunction restraining the defendants from interfering with the plaintiffs peaceful possession and from encumbering or alienating the suit properties.

3. It is claimed by the plaintiffs that they had executed a power of attorney in favour of the first defendant on 15.05.1995 and the same was cancelled after due notice to the first defendant on 24.03.2014. It is stated that after cancellation, certain alienation has been made by the first defendant in favour of the third defendant on relying upon a power of attorney dated 21.06.1983 which was not executed by the Plaintiffs. Therefore, according to the plaintiffs, the sale deeds are not binding on them. The suit is resisted by the defendants contending that apart from executing the power of attorney on 15.05.1995, the plaintiffs have also executed a Varthamanam letter wherein, they have acknowledged that the entire sale consideration has been paid. The first defendant was put in possession of the property. Therefore, according to the first defendant, the plaintiffs are not entitled to cancel the power of attorney dated 15.05.1995.

4. Pending suit, the defendants came up with two applications in I.A.Nos.425 & 426 of 2018 under Section 75 of the Civil rules of practice and section 45 of the Evidence Act seeking to call for the records from the office of the Sub-Registrar relating to power of attorney dated 15.05.1995 and to compare the signatures found therein with the signatures found in the Varthamanams letter, which was marked as Ex.B3.

5. The Trial Court, upon a consideration of the facts and circumstances of the case concluded that since the execution of the Varthamanam letter has been specifically denied by the plaintiffs in the plaint itself, it is for the defendant to prove its execution and the defendant must have an opportunity to establish the execution of the Varthamanam letter dated 15.05.1995 by plaintiffs.. Upon such conclusion, the learned Trial judge allowed the application.

6. I have heard Mr.N.Manokaran, learned counsel for the petitioners. Mr.V.S.Kesavan, learned counsel for the respondents.

7. Mr.N.Manokaran, learned counsel for the plaintiffs / petitioners would vehemently contend that such comparison is wholly unnecessary, since the Varthamanam letter will not have any effect on the right of the first defendant to deal with the property. He would further submit that execution or otherwise of the Varthamanam letter will not have any effect on the prayers that have been sought for in the suit.

8. Mr.V.S.Kesavan, learned counsel for the respondents/

defendants would submit that the Varthamanam letter evidenced payment of the entire sale consideration on that day itself i.e., on 15.05.1995 and when the power of attorney and Varthamanam letter are executed together, both the documents should be looked into. Since the plaintiffs have categorically denied the signatures in the Varthamanam letter it is also more necessary for the defendants to have them compared with the admitted signatures of the plaintiffs on the same day to establish the truth and validity of the Varthamanam letter. I have considered the rival submissions.

9. I am of the considered opinion that the defendants should be given chance to establish the truth and validity of the Varthamanam letter, which is stoutly denied by the plaintiffs. Even assuming that the Varthamanam letter cannot be used as instrument of title it would at least prove passing of consideration on the date of execution of the power of attorney dated 15.05.1995. To that extent, the Varthamanam letter is very relevant therefore, the order of the Trial court in directing comparison of signature in the Varthamanam letter with the admitted signatures found in the office of the Sub-Registrar cannot be faulted. Therefore, I do not see any ground to interfere with the order of the Trial Court. These civil revision petitions fail and they are accordingly dismissed. No costs.

Sd/-

Assistant Registrar

// True Copy//

Sub Assistant Registrar

kkn

To

1. The Principal District Munsif,
Erode.

+1cc to Mr.V.S.Kesavan, Advocate, Sr.No.29066

+2cc to Mr.N.Manokaran, Advocate, Sr.Nos.29130 & 29129

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& 3069 of 2018

SPD(CO)
GS(19/10/2020)