

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 3251 of 2018
in
C.M.P.No. 18490 of 2018

Venkatavarathan

..Petitioner/1st Defendant

Vs.

1.Kumarar
2.Desingu

..Respondents/2nd Plaintiff

Prayer: Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 13.04.2018 passed in I.A.No. 31 of 2017 in O.S.No. 233 of 2014 on the file of the Principal Sub-Court, Tindivanam.

For Petitioner : Mr.V. Regunathan

For Respondents : No Appearance.

O R D E R

The petitioner, aggrieved by an order dismissing his application in I.A.No. 31 of 2017 seeking comparison of signature in the power of attorney said to have been executed by him in favour of the first defendant and the sale deed dated 03.11.2010 under which he had purchased the suit property has come up with this civil revision petition.

2. The suit is laid for specific performance of an agreement of sale said to have been entered into by one Harikrishnan as a power of attorney of the petitioner on 23.07.2011. It is also claimed that the petitioner had executed power of attorney in favour of Harikrishnan on 25.11.2010. The petitioner has purchased the suit property on 03.11.2010 under a registered sale deed. The suit was originally laid only against the petitioner represented by his power of attorney. The suit was not taken on file. The plaintiff filed Civil Revision Petition in C.R.P.No. 389 of 2013 which was allowed with the

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direction to implead the petitioner as the second defendant. The power of attorney agent filed a written statement accepting the agreement. Immediately, thereafter, the petitioner had filed a written statement denying execution of the power of attorney and also filed the present application seeking comparison of the signature found in the unregistered power of attorney dated 25.11.2010 with his signatures in the registered sale deed dated 03.11.2010. No counter was filed by the respondents in the said application. Despite the same, the learned Sub-Ordinate Judge, herself to compare the signatures and she concluded that the signatures have been made by the one and the same person.

3. This Court and the Hon'ble Supreme Court have repeatedly cautioned the Court, which it does not have the expertise from testing the similarity of the signatures even, after the entire evidence is placed on record. In this case, the learned Sub-Ordinate Judge has undertaken a risk of comparison of the signature even in the absence of any further evidence. I am, therefore, convinced that the approach of the learned Sub-Ordinate Judge is incorrect and her order if allowed to stand would occasion failure of justice. The order made in I.A.No. 31 of 2017 is set aside, the Civil Revision Petition is allowed, I.A.No. 31 of 2017 is remitted back to the learned Sub-Ordinate Judge, Tindivanam with the direction to appoint an Advocate Commissioner to send the documents namely, sale deed dated 03.11.2010 and the power of attorney dated 25.11.2010 to the Government Forensic Laboratory, Chennai and have them compared. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kkn

To:-

The Principal Sub-Court,
Tindivanam.

VG II(CO)
CB(13/10/2020)

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