



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 25.02.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.1838 of 2019

and

CMP (MD)No.9457 of 2019

1.G.Kumar

2.G.Karthikeyan

... Petitioners/Petitioners/Plaintiffs

Vs.

1.G.Dhanalakshmi

2.Kavitha

... Respondents/Respondents/Defendants

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.07.2019 made in I.A.No.122 of 2018 in O.S.No.74 of 2011 on the file of the Additional Sub-Court, Kumbakonam, and to allow the I.A petition.

For Petitioners : Mr.P.Arun Jayatram

For Respondents : Mr.R.Rajaraman

ORDER

This petition has been filed against the order dated 24.07.2019 made in I.A.No.122 of 2018 in O.S.No.74 of 2011 on the file of the Additional Sub-Court, Kumbakonam.

2.The petitioners herein are the plaintiffs and the respondents herein are the defendants in the suit.

3.The petitioners filed a suit for a prayer of specific performance, possession and for recovery of money. In that suit, the petitioners filed an Interlocutory Application in I.A.No.122 of 2018 for appointment of an Advocate Commissioner for sending the signature of the first defendant for an expert opinion. That petition was dismissed by the Trial Court. Against which, the



petitioners preferred this revision.

4. Brief substance of the petition in I.A.No.122 of 2018 is as follows:-

The petitioners filed a suit for specific performance and for other reliefs against the defendants. The plaintiffs and the first defendant entered into a sale agreement on 01.01.2011. The entire Sale consideration was fixed as Rs.5,55,293/-. On the date of sale agreement Rs.50,000/- was paid as advance. Later on several dates, a total amount of Rs.3,10,000/- was paid on behalf of the first defendant through her husband.

5. Though, the plaintiffs were willing to pay the balance consideration, the first defendant and her husband viz., Govindaraj were evading execution of the sale deed. As the first respondent tried to execute a settlement deed in favour of his daughter/2nd defendant, a suit in O.S.No.242 of 2011 was filed before the Principal District Court, Kumbakonam, for a prayer for injunction not to alienate the property. During the pendency of the suit, the first defendant executed a settlement deed in favour of the second defendant on 05.07.2011. That document is void under Section 52 of the Transfer of Property Act. To cheat the plaintiffs, the defendants 1 and 2 collusively engaged separate advocates and the counsel, who appeared for defendant No.2 has cross examined D.W.1 and the first defendant denied her signature in the suit sale agreement.

6. Therefore, it is necessary to compare the signature of the first defendant in the sale agreement with her signature in the sale deed dated 20.12.2006, marked as Ex.A10. Only after comparing the signature in the sale deed dated 20.12.2006 with the signature in the sale agreement dated 01.01.2011/Ex.A1, the Court can come to a correct conclusion. Even D.W.1 in her cross examination has admitted that she has no objection to compare the signatures with the help of an expert. An advocate commissioner has to be appointed to send the documents Ex.A1, Ex.A10, Ex.B2, Ex.X1 and Ex.X3 for comparison by an expert.

7. Brief substance of the counter in I.A.No.122 of 2018 is as follows:-

The reasons for the petition is not clearly stated and contemporary documents are not filed and the petition has to be dismissed.

8. After hearing both sides, the Trial Court has dismissed the petition. Against which, the petitioners approached this Court by way of this revision petition.

9. On the side of the petitioners, it is stated that the Trial Court made a wrong observation that the petitioners filed only Xerox copies to send for an expert opinion, whereas, the petitioners filed certified copies of the documents. The Trial Court failed to



respondents and that the first respondent's counsel filed a memo stating that he was admitted in a hospital in Mannarkudi. But he failed to mention the name of the said hospital.

10.The petitioners have filed a petition to send for the documents dated 20.12.2006 and 24.05.2011, for expert opinion, the first respondent filed a memo dated 18.04.2017, stating that those documents are in the custody of the second defendant. On the same date, the second defendant also filed a memo stating that the document dated 20.12.2006 is with the mortgagor. Since the first defendant disputed the signature in the sale agreement examination by a hand writing expert is necessary. The petitioners have produced certified copies of the documents dated 20.12.2006 and 24.05.201. Since the original documents are in the hands of the defendants, those documents could not be produced by the petitioners before the Court. The certified copies filed by the petitioners are admissible evidence. Hence, the order of the Trial Court is to be set aside.

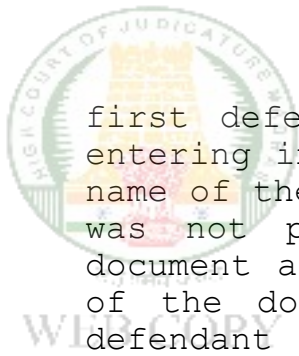
11.On the side of the petitioners, a judgment published in **2008 (2) CTC 831** is cited whereas it was decided as follows:-

"On a comparison of the signature testatrix Alamelu made by this Court as per Ex.D.8 - Agreement and that of Ex.C.1 - Certificate copy of Will dated 17.09.1986, they do not tally and in fact the signature found in Ex.D.8 as "Alamelummam" and that of the signature in Ex.C.1 as "Alamelummam" in Tamil, there is a marked difference and this creates a suspicion and genuineness of the said Will"

12.On the side of the petitioner, it is stated that burden is on the plaintiffs to prove the case. The plaintiffs rightly filed an application to compare the signature by an expert. A judgment of this Court published in **2019 (2) MWN (Civil) 707** is cited whereas it was decided as follows:-

"Suit for recovery of money based on Promissory Note, due execution of which has been denied by Defendant on ground that document is forged - Defendant has taken specific stand in Written Statement that Promissory Note is forged, hence it is his duty to prove same, and he has rightly filed Application to compare signature - Document produced by Defendants are ones which were executed 7 years before disputed document - Hence, no prejudice would be caused to Plaintiff, if signature is directed to be compared"

13.On the side of the petitioners, it is stated that the petitioners have taken effective steps to examine the husband of the



first defendant. The first defendant to protect her husband from entering into the witness box evaded the same by not mentioning the name of the hospital. Since the original sale deed dated 20.12.2006, was not produced, the plaintiffs filed a memo to produce the document and that the first defendant has stated that the original of the document dated 20.12.2006 was handed over to the second defendant along with the settlement deed dated 24.05.2011 and that the second defendant filed a memo stating that the sale deed dated 20.12.2006 was not in her custody and the same was in custody of a mortgagor. Without proving the signature of the first defendant in Ex.A1, it will be difficult for the plaintiffs to prove their case, the admitted original documents are in the custody of the defendants and the defendants are cheating the petitioners by stating that the original document dated 20.12.2006 is not in their custody. The plaintiffs obtained a certified Xerox copy of the sale deed from the Joint Sub-Registrar, Kumbakonam and has marked the same as Ex.A10 and the plaintiff prayed Ex.A10 to be compared with Ex.A1.

14.On the side of the respondents, it is stated that a Xerox copy cannot be sent for expert opinion and that law is well settled that a Xerox copy cannot be sent for an expert opinion.

15.It is seen that the revision petitioners filed a suit for specific performance, the burden is upon the revision petitioners to prove the signature. The petitioners filed a memo calling for documents from the defendants. The defendant No.1 filed a reply memo stating that the documents are with the second defendant. The second defendant filed another memo stating that she mortgaged the property and the document is with the mortgagor. The name and particulars of the mortgagor was not stated in the memo filed by the second defendant. In the above circumstances, an opportunity for the plaintiffs to put forth their case has to be given.

16.On the side of the respondents, it is argued that the revision respondents is ready to give the particulars of the mortgage. The revision respondents are directed to furnish the particulars of the mortgage and the mortgagor within a period of two weeks from the date of receipt of a copy of this order. On such submission of the mortgage particulars, the Trial Court is directed to send for the documents from the mortgagor within a period of two weeks there from.

17.In case of non-production of particulars of mortgage and mortgagor within the time limit, the trial Court is directed to appoint a Court Commissioner to send the available document including the certified Xerox copies for comparison by the expert. If the defendants do not co-operate for sending the documents for an expert opinion, adverse inference has to be taken against the defendants by the Trial Court.



18. With the above observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

To

1. The Additional Sub-Court,
Kumbakonam.

Copy to:

The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.RAJARAMAN, Advocate (SR-8449[F] dated 26/02/2020)

+1 CC to M/s.P.ARUN JAYATHRAM, Advocate (SR-8604[F] dated 26/02/2020)

C.R.P. (PD) (MD)No.1838 of 2019

and

CMP (MD)No.9457 of 2019

25.02.2020

NR(09.06.2020) 5P 5C