

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD).No.159 of 2021
and
C.M.P.No.1496 of 2021

M.S.Sudhakar

...Petitioner

-VS-

P.Seetharaman

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal order dated 11.11.2020 in I.A.No.2 of 2020 in O.S.No.500 of 2016, on the file of the Principal District Munsif Court, Bhavani.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.D.Selvaraj

ORDER

The suit in O.S.No.500 of 2016, which is now pending before the learned Principal District Munsif, Bhavani, has been filed by the revision petitioner herein.

2. The said suit has been filed seeking judgment and decree in the nature of permanent injunction, restraining the defendant or anybody else under the defendant from disturbing the plaintiff's peaceful possession with respect to the suit properties. The suit properties are agricultural lands. Naturally, the issue of possession will revolve around the evidence, which is let in by the parties.

3. A written statement has been filed by the defendant disputing the title of the plaintiff. The defendant claims title over the properties through an earlier suit, which was filed before the District Munsif Court at Gopichettipalayam, which proceeded in the normal manner and finally the paternal uncle of the defendant Mr.Thiruvengkatasamy had obtained title over the said properties. It is also the contention of the defendant that Mr.Thiruvengkatasamy had later executed a registered Will on 22.09.1994 in favour of the defendant and therefore, the defendant acquired the title of the said properties.

4. I am not going deeply into the correctness of the title of the suit properties, which is a subject matter to be decided by the learned Judge.

5. The plaintiff, on the other hand, relied on a document, a Deed of Declaration-cum-Indemnify affidavit. The plaintiff claimed that this document has been executed by the defendant on 21.06.2016. In the said document, the defendant had acknowledged the title of the plaintiff over the suit properties and had also stated that the plaintiff is continuously in possession of the suit properties. This document was also filed along with the suit.

6. In the written statement, the defendant had very specifically denied his signature in the said document. He actually stated that his signature has been forged and the signature found in the document is not his signature.

7. The parties had been invited to adduce evidence. The plaintiff has already been examined as P.W.1 and the said disputed document has already been marked as Ex.P6. There is also another document marked as Ex.P7, in which, the plaintiff has also contended contains the signature of the defendant, but which signature has also been denied by the defendant.

8. After completion of examination of witnesses on the side of the plaintiff, the defendant has been examined in chief as DW.1 and cross

examination has been done in part. At that stage the application has been filed, calling upon the Court to forward the Ex.P6 to compare the signature found in Ex.P.6 with the signature found in Ex.P7 by a Hand Writing Expert. This application came to be considered by the learned District Judge, who opined that since it is a suit for bare injunction, the issue of proving the document and its genuineness will not arise at this stage and the genuinity or otherwise signatures would not be germane to decide the issue of possession and therefore, rejected the said petition.

9. The learned Judge has also observed that I.A.No.2 of 2020 had been filed, when the cross examination of the defendant has been conducted and stated that he has filed the same only to protract the proceedings. The learned Judge had dismissed the Interlocutory Application, against which the present revision petition has been filed, questioning the said order.

10. Heard Mr.M.K.Selvaraj, the learned counsel for the petitioner and Mr.D.Selvaraju, learned counsel for the respondent herein.

11. Since the Original Suit is at the stage of trial, particularly, at the

stage of further cross examination of DW.1, it would be highly inappropriate on my part even to examine the rival contentions on the merits of the suit.

12. Be that as it may, the plaintiff relied on Ex.P.6 Declaration-cum-Indemnity Affidavit. The defendant denies the signature in the Ex.P6. The plaintiff has also sought permission of the Court to forward Ex.P6, to compare the signature found in Ex.P.6 with the signature found in Ex.P7. The defendant disputes the signature in Ex.P7 and also his signature in another document, which had been produced by the plaintiff under Ex.P10. The onus vests entirely on the plaintiff, if he wants to compare the signature of Ex.P6, to produce contemporaneous documents containing admitted signatures of the defendant. Comparison should be done between the disputed signature and the admitted signature. The onus will always be on the plaintiff to produce admitted signatures of the contemporaneous period of around the year 2016 as otherwise, the said exercise would only be a futile exercise.

13. It is only appropriate that the parties are permitted to adduce all necessary evidence to their satisfaction and ensure that all possible evidences

are placed on record. The learned Judge should appreciate the evidence in entirety and come to a conclusion regarding the issues framed. There are two possibilities, which would arise during the forensic examination.

14. The expert may opine that the signature in the Ex.P6 is not the signature of the defendant and if that opinion is forwarded, the learned Judge may necessarily view Ex.P6 from a different perspective.

15. The expert may also opine that the signature in the Ex.P6 is the actual signature of the defendant. If such report is forwarded, then the learned Judge examine Ex.P6 in the light of such opinion. The contents of Ex.P6 have to be independently proved by the parties. The burden is on the parties to prove the said contents and such contents will also have to be tested during the cross examination.

16. In view of all these reasons, I hold that the order passed by the learned Judge has to be reviewed and liberty should be granted to the revision petitioner/plaintiff to forward Ex.P6 for testing the signature of the defendant to be decided along with the admitted signatures of contemporaneous period. The

entire exercise must be done at the earliest. I am confident that the plaintiff would not take unnecessary adjournments in this regard. The plaintiff may cross examine the defendant on all aspects relating to the statements made by him in the written statement. That process may continue and in the meanwhile, Ex.P6 may be forwarded for examination of the expert.

17. For the aforesaid reasons, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

17.04.2021

Internet : Yes
Index : Yes
Speaking/Non Speaking order
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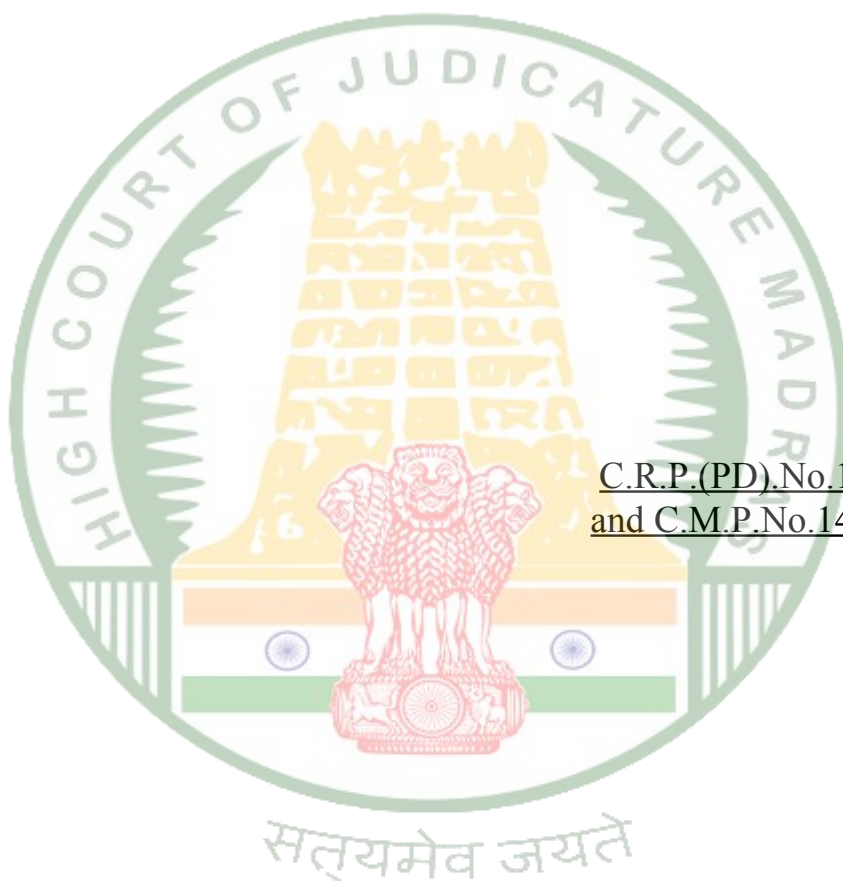
The Principal District Munsif Court, Bhavani.

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C.V.KARTHIKEYAN. J.

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