

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.NO.1965 OF 2020 AND C.M.P.NO.12221 OF 2020
CAVEAT NOS.7315 OF 2019 AND 1863 OF 2020

1. Chellammal
2. Venkatesan
3. Sivaranjani

... Petitioners/Petitioners/Appellants

Vs.

1. Gopal
2. Ramalingam

... Respondents/1st Respondents/
1st Respondents

Prayer:-

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 14.10.2019 in I.A.No.2 of 2019 in A.S.No.100 of 2018 passed by the learned Additional District and Sessions Judge (Fast Track Court), Villupuram and to allow the present Civil Revision Petition.

For Petitioners : Mr.T.Sundaravadanam

For Respondents : Mr.V.R.Appaswamee

O R D E R

The present Civil Revision Petition has been filed to set aside the order dated 14.10.2019 in I.A.No.2 of 2019 in A.S.No.100 of 2019 passed by the learned Additional District and Sessions Judge, Villupuram and to allow this petition by raising various grounds.

2. The 1st respondent is the plaintiff in Original Suit. The petitioners are the respondents 2, 3 and 4 in appeal suit in A.S.No.100 of 2018 and the 2nd respondent is the 1st respondent in the said Appeal suit. The case of the petitioners is that the court below has dismissed the petition, viz., I.A.No.2 of 2019, which was filed seeking a direction to allow the petitioners' plea to appoint an Advocate Commissioner for scientific examination of Exhibits A.1 and B.16 by taking those original

documents from the court to the Hand-writing expert, Forensic Laboratory, D.G.P.Office, Santhome, Chennai for the purpose of comparison of signatures of their father, namely, Perumal found in Ex.B.16 to that of his disputed signatures found in Ex.A.1 and submit his report along with the report of the handwriting expert.

3. The court below after considering the documents filed by the 1st respondent/ plaintiff and the petitioners has stated that in Ex.A.1, the petitioners' father has signed without initials and in Ex.B.16, it is seen that he has signed with initials, viz., N.Perumal and came to the conclusion that at times the petitioners' father is in the habit of signing with initials and at times without initials. Hence Ex.B.16 was executed after the knowledge of Ex.A.1 sale agreement and hence no reliance can be made supported. Further, observing that the signature appears normal, the court below dismissed the petition in I.A.No.2 of 2019, as against the same, the petitioner is before this Court.

4. The learned counsel for the petitioners submitted that they have taken out an application for appointment of advocate commissioner to prove that the signature of their father, Perumal found in Ex.B.16 differs from the signature found in Ex.A.1 and to enable the said advocate commissioner to file a report to say that the said instrument alleged sale agreement dated 10.02.2006 , Ex.A.1 was not signed by his father and it is created forgedly by the 1st respondent as if the said Perumal has executed agreement of sale in favour of one Gopal, who is the 1st respondent agreeing to sell the agricultural lands.

5. The learned counsel for the petitioners further submitted that the signature found in a sale agreement dated 10.02.2006 marked as Ex.A.1 and the signature found in written statement in O.S.No.1 of 2007 will prove in bare eyes that the signature differs from its original signature which is executed within one year time frame.

6. The learned counsel for the petitioners contend that the court below has erred in dismissing the application mechanically without applying the mind and the directions by the Hon'ble Apex Court in several cases if the genuine case of fabricated signature is found at any point of time pending dispute.

7. The learned counsel for the petitioners also contend that the court below ought not to have dismissed the application on the ground that it is filed belatedly at the stage of First Appeal and it is miscalculation that fabricated instrument has been seen in the naked eye and came to a conclusion that they cannot allow the said application and has to be set aside. He also submitted that the alleged sale agreement and payment

towards the sale agreement was not at all proved by the respondents in the trial.

8. The learned counsel for the petitioners also submitted that only an alternative prayer was allowed by the court below directing the petitioners to return the money of Rs.1,00,000/- paid as alleged advance amount with interest at 12% per annum, against which, the 1st respondent has preferred A.S.No.5 of 2016 and the petitioners have filed A.S.100 of 2018.

9. The court below had considered the averments made in the plaint wherein it is averred that in the alleged agreement of sale it is found that a sum of Rs.1,00,000/- has been paid on 10.02.2006 and only Rs.20,000/- has to be paid within a period of three months. The agreement contains the usual clauses process and when the 1st respondent / plaintiff is ready and willing to perform his part of contract and obtain the sale deed from the defendants [petitioners' father and 2nd respondent] at his expense. The plaintiff is always ready with the funds. The plaintiff has been calling upon the defendants by tendering the balance amount to receive the balance of sale consideration and to execute a sale deed at the cost of the plaintiff, but the defendants had executed the sale deed on the one text or the other.

10. The 1st respondent / plaintiff further submitted in the plaint that after knowing well the payment of sale executed by the 1st defendant in his favour had colluded with the 1st defendant and created a sale deed in his favour in order to compel the plaintiff to convey his land. Further, plaintiff caused a registered notice dated 22.04.2006 against the defendants and they have sent a belated reply on 13.05.2006 which contained untenable allegations. Since the plaintiff prayed for alternative relief of recovery of alternate amount of Rs.1,00,000/- with 12% interest, the defendants had filed written statement and denied the execution of agreement of sale and stated that they denied all the averments in the plaint and submitted that they have not colluded with any person and created a sale deed in his favour.

11. Contending contra, a written statement has been filed by the 1st defendant [petitioners' father] wherein it is alleged that the readiness and willingness of the plaintiff to pay the amount are false and he submitted that it is only forged agreement and sale. Plaintiff and his brother Venkatesan are powerful person and they are always in the habit of touching othermen property. The 1st dfendant have sold the 1st item of suit mentioned property to the 2nd defendant for valid consideration. The 2nd defendant is in active physical possession of the 1st item of suit schedule property and the other items of

suit schedule property are in 1st defendant [petitioners' father] possession.

12. Further, in the written statement it is submitted that he never received any pie from the plaintiff as per the alleged sale agreement or for any other purpose whatsoever much less the sum of Rs.1,00,000/- as advance and he never executed any agreement either on 10.02.2006 or any other date. He further submitted that he never agreed to execute the sale deed in favour of the plaintiff and also he is not liable to pay a sum of Rs.1,00,000/- and prayed that the suit to be dismissed.

13. On going through the averments in the petition it is seen that originally suit was filed for specific performance directing the defendants / petitioners' father and 2nd respondent, to execute a registered sale deed in respect of the suit schedule property in respect of the plaintiff within a stipulated time after receiving the balance of the sale consideration of Rs.20,000/- and directing the 1st defendant [petitioners' father] to pay a sum of Rs.1,00,000/- with interest at the rate of 12% per annum from the date of plaint till discharge with a charge on the suit property.

14. The court below after considering both the parties allegations and averments had come to a conclusion that the plaintiff is not entitled to a relief of specific performance and delivery of possession and he is entitled to relief of alternative prayer directing the defendants 3 to 5, legal heirs of the 1st defendant to pay a sum of Rs.1,00,000/- with interest at the rate of 12% per annum from the date of claim till the date of realisation. As the 1st defendant died at the time when the suit was pending, the legal heirs of the said defendant had to put charge on the suit property and the suit was dismissed in respect of relief of specific performance and delivery of possession. Aggrieved by the said Judgment and Decree, A.S.No.5 of 2016 was filed by the 1st respondent and since the 1st defendant died, the legal heirs of the said 1st defendant / petitioners have filed A.S.No.100 of 2018. At the time when the said appeals are pending, I.A.No.2 of 2019 was filed by the petitioners, [legal heirs of the 1st defendant] to appoint an advocate commissioner to submit the originals and documents, Ex.A.1 and B.16 to be sent to the Handwriting Expert, Forensic laboratory situated at D.G.P.Office, Santhome, Chennai for comparison of the signatures found in Ex.B.16 and submit his report.

15. Resisting the same, a counter was filed by the 1st respondent / plaintiff submitting that the 2nd defendant, who is

a purchaser namely, the 2nd respondent is in unlawful possession of the properties and the others are colluding together only to protract the proceedings. He also submitted that earlier, the petitioners have filed an application in I.A.No.240 of 2018 for stay of the Decree and at that time they have not chosen to file any application to compare the signature. At this belated time, after the said findings made by the court below that there is no dispute regarding the agreement which is true and valid, the petitioners have filed the petition only to drag on the proceedings. He further submitted that the Ex.A.1 cannot be compared with Ex.B.16, which has been executed after the execution of the present agreement of sale, which is six months after execution of the sale and he submits that the document to be compared only in the same period and subsequent documents cannot be compared. He also found that the 1st defendant is in the habit of signing in tamil at time with initial and at time without initial and he has very good knowledge of execution of Ex.A.1 and the court cannot come to a conclusion that there are no initials in the documents, which was signed subsequently.

16. The court below after considering the pleadings had come to the conclusion that the document Ex.B.16 has been executed after 10 months after signing the agreement of sale. The documents which are signed prior to the agreement of sale has not been produced for comparison. The court below has also come to the conclusion that in the signature, the father could have signed differently only to decode the plaintiff, he could have signed the same and accordingly the signature of the subsequent document cannot be accepted. He also submitted that by comparing the said signatures on naked eye, both the signatures are found to be similar and the court below has rightly held that the said perumal was in the habit of signing with initial and without initial and hence the court also has taken into account the petitioners have not taken out the application at earlier point of time and now at this stage, the application cannot be considered and dismissed the said application.

17. At this juncture, the counsel for the petitioners submits that the petitioners are ready and willing to produce any document, which is prior to the document executed before the year 2006 and prayed this Court to allow the same. Further, in support of his contention, he has relied on the order passed by this Court in [D.Janaki Vs. S.Jayalakshmi] C.R.P.No.3667 of 2011 and M.P.No.1 of 2011 dated 09.01.2012.

18. Considering the facts and circumstances of the case and taking note of the pleadings and counter pleadings on either

side and the order referred supra, at this point of time, this Court is not in a position to comment on the same, however, the petitioners ought to have produced the documents at the first chance itself and they cannot come and canvass the same before this Court at present. On going through the said documents, which has been filed in support of the petition, it is seen that the petitioners' father used to sign in a different way, however it can be compared to the subsequent document, sale deed dated 06.12.2006.

19. It is also the further case of the petitioners that to compare the alleged signature in the agreement of sale, Ex.A.1 with Ex.B.16, which is totally different, he needs the help of an expert to prove that this alleged agreement of sale was a fabricated document. On hearing the learned counsel on either side, it is seen that the said documents are wantonly written and there is a likely hood of the petitioners' father signing the document differently and the petitioners could have filed this petition at the earlier point of time. There is some force in the submission of the respondents' counsel that the documents which are executed after the said execution of sale cannot be accepted for comparison.

20. On going through the documents placed on record it is seen that originally, the suit was filed in the year 2007 and Ex.B.16, alleged document has been executed on 6.12.2006 and the alleged deed of agreement of sale, A.1 was executed on 15.02.2006. In the said alleged document, in Twenty Rupees stamp paper, the number in the left side corner, it is written as 188/15.02.2006 and it seems that it is not 10.02.2006 and it looks like 15.02.2006 and the said signature has been found to be slightly different from the documents registered after the alleged said sale deed. In the interest of justice, fairplay, it would be appropriate for this Court to restore I.A.No.2 of 2019 on the file of learned Additional District and Sessions Judge (Fast Track Court), Villupuram to appoint Advocate Commissioner. The said court shall direct the Forensic Expert to complete the examination of the signature within fourteen days from the date of depositing the same by the Advocate Commissioner. After receiving the report from the handwriting expert, the court below is directed to continue the said trial and complete the same within a period of six months thereafter. The remuneration for the Advocate Commissioner shall be borne by the petitioners.

In fine, the present Civil Revision Petition is allowed and order passed in I.A.No.2 of 2019 in A.S.No.100 of 2018 dated

14.10.2019 is set aside and the said I.A. is restored to file of the court below. Consequently, connected miscellaneous petition and Caveat Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Additional District and Sessions Judge
(Fast Track Court), Villupuram
2. The Hand Writing Expert,
Forensic Laboratory,
D.G.P.Office, Santhome,
Chennai

+1cc to Mr.T.Sundaravadanam, Advocate, S.R.No.7194

+1cc to Mr.V.R.Appaswamee, Advocate, S.R.No.7446

C.R.P.No.1965 of 2020 and C.M.P.No.12221 of 2020
Caveat Nos.7315 of 2019 and 1863 of 2020

AAB (CO)
CS/19/03/2021

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