



C.R.P.(P.D).No.1041 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(P.D) No.1041 of 2020 and
C.M.P.No.5676 of 2020**

Ramachandran

...Petitioner

Vs.

1.Selvaraj

2.Lakshmi

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, is filed to set aside the order and decree dated 04.01.2020, passed in I.A.No.1 of 2019 in O.S.No.360 of 2008 on the file of the Additional District Munsif, Tiruvallur.

For Petitioner : Mr.P.B.Balaji
For Respondents : Mr.J.Muthukumaran for R1 and R2

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.1 of 2019 in O.S.No.360 of 2008 on the file of the learned Additional



C.R.P.(P.D).No.1041 of 2020

District Munsif, Tiruvallur. The suit in O.S.No.360 of 2008 was filed by the petitioner/plaintiff against the respondents/defendants for the relief of permanent injunction. The petitioner/plaintiff submitted that petitioner purchased the suit property from the first respondent/first defendant on 08.02.1995. The case of the respondents/defendants is that the first respondent had not sold the suit property to the petitioner on 08.02.1995 and executed the sale deed. It is also specifically denied that the thumb impression in the sale deed is that of the first respondent. The petitioner filed I.A.No.1 of 2019 for sending the sale deed to the finger print expert in Forensic Science Department, Chennai for comparing first respondent's thumb impression with his admitted thumb impression lifted before the Court. This petition was contested by the respondents. The learned Additional District Munsif, Tiruvallur, on considering the rival submissions dismissed the petition on the ground that petitioner can prove the execution of document by following the provision of Section 68 of Indian Evidence Act. Challenging the said order, this Civil Revision Petition is preferred.

2.The learned counsel for the petitioner submitted that the attestors to the sale deed are dead and therefore, only mode available for the petitioner



C.R.P.(P.D).No.1041 of 2020

to prove the execution of the sale deed by first respondent is to send the sale deed for finger print expert's opinion. That was the reason why the application was filed and that was dismissed by the learned Additional District Munsif, Tiruvallur, without considering the merits of the petitioner's. Therefore, he prayed for setting aside the order of the learned Additional District Munsif, Tiruvallur, and for allowing the Petition.

3.In response, learned counsel for respondents submitted that, the fact that respondents, especially first respondent denied the execution of sale deed dated 08.02.1995 was made known to the petitioner even on 06.04.2009, when the respondents filed written statement. It was specifically denied in the written statement that the first respondent executed the sale deed. The suit was filed in the year 2008. However, this petition for sending the sale deed to finger print expert's opinion was filed only in 2019, eleven years after filing of the suit. The suit is pending for cross-examination of DW1. The filing of the I.A.No.1 of 2019 at this stage, is only an exercise to further delay the disposal of the case. Therefore, the learned counsel for the respondents prayed for confirming the order of the learned Additional District Munsif, Tiruvallur, and for dismissal of this Civil Revision Petition.



C.R.P.(P.D).No.1041 of 2020

WEB COPY

4.Considered the rival submissions and perused the records.

5.The suit is filed only on the basis of sale deed dated 08.02.1995.

This is a primary document on the basis of which the petitioner filed his case. It is claimed that the sale deed had been executed by the first respondent in favour of the petitioner for valid consideration. This claim is disputed by the first respondent and first respondent claims that he had not executed the sale deed and the thumb impression available in the sale deed is not that of him. It is also submitted that the attestors to the sale sale deed are no more. Thus the only mode available for the petitioner to prove the execution of the sale deed is to send the sale deed for finger print expert's opinion to find out whether the finger print available in the sale deed is that of first respondent and whether he had executed the sale deed in favour of the petitioner. Though there is a delay in filing this petition, it appears that first respondent was examined as DW1 and he was confronted with this sale deed. Even during cross-examination, first respondent denied the execution of sale deed. Under the said circumstances, this Court finds there is no unreasonable delay in filing the petition. To adjudicate the matter properly and correctly and to render substantial justice to



C.R.P.(P.D).No.1041 of 2020

WEB COPY

the parties, it is necessary to send the sale deed dated 08.02.1995, which is marked as Exhibit A1 to the finger print expert's opinion, Forensic Science Department, Chennai along with the finger print lifted from the first respondent. In this view of the matter, the order dated 04.01.2020, in I.A.No.1 of 2019 in O.S.No.360 of 2008 passed by the learned Additional District Munsif, Tiruvallur, is set aside and this I.A.No.1 of 2019 is allowed. The learned Additional District Munsif, Tiruvallur, is directed to appoint Advocate Commissioner with the direction to take a registered sale deed dated 08.02.1995 (Exhibit A1) along with the thumb impression of 1st respondent taken before the Court for Scientific investigation by the finger print expert by comparison and filing a report.

6.Resultantly, this Civil Revision Petition is allowed. No costs.
Consequently, connected miscellaneous petition stands closed.

ep

29.10.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

5/7



C.R.P.(P.D).No.1041 of 2020

WEB COPY

- To
1. The Additional District Munsiff,
Tiruvallur
 2. The Section Officer,
VR Section,
High Court of Madras.



WEB COPY



C.R.P.(P.D).No.1041 of 2020

G.CHANDRASEKHARAN.J,

ep

**C.R.P.(P.D) No.1041 of 2020
and
C.M.P.No.5676 of 2020**

29.10.2021