

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.3036 of 2015

and

MP.No.1 of 2015

S.Chinnasamy

..Petitioner

Vs.

S.Kalpana

..Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decreetal order dated 06.03.2015 in I.A.No.1998 of 2014 in O.S.No.59 of 2014 on the file of the II Additional District Judge, Tiruppur.

For Petitioner : Mr.K.Myilsamy

For Respondent : No appearance

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order in I.A.No.1998 of 2014 in O.S.No.59 of 2014 on the file of the II Additional District Judge, Tiruppur thereby dismissing the application filed by the petitioner to send the documents for expert opinion under Section 45 of the Indian Evidence Act.

2. The learned counsel for the petitioner would submit that the petitioner filed a suit for specific performance based on the sale agreement dated 04.03.2011, which was executed by the respondent herein. The respondent filed the written statement and she specifically denied the signature found in the agreement for sale. When it being so, the petitioner wants to prove the agreement for sale by establishing the signature found in the sale agreement is of the respondent herein by getting expert opinion.

3. He further submitted that the petition was dismissed only on the ground that the petitioner ought to have filed an application under Order XI Rule 14 of the Code of Civil Procedure to summon the original admitted documents from the respondent even before filing the application under Section 45 of the Indian Evidence Act. He further submitted that even in the application itself he categorically stated that if the application under Section 45 of the Indian Evidence Act allowed, then the petitioner would file a petition under Order XI Rule 14 of the Code of Civil Procedure.

4. Heard Mr.K.Myilsamy, learned counsel for the petitioner. Though notice was served to the sole respondent and her name has been printed in the

cause list, no one appeared on behalf of the respondent before this Court in person or through pleader.

5. The petitioner is the plaintiff. The petitioner filed the suit for specific performance on the strength of the sale agreement dated 04.03.2011. The respondent filed written statement denying the signature found therein. Therefore, the petitioner ought to have proved the signature found in the agreement for sale. As such the petitioner filed a petition under Section 45 of the Indian Evidence Act to send the document viz., the sale agreement for comparison with admitted signature found in the general power of attorney. It was rejected only on the ground that the petitioner failed to file an application under Order XI Rule 14 of the Code of Civil Procedure, to summon the original admitted documents from the respondent before filing the petition under Section 45 of the Indian Evidence Act.

6. On perusal of the averments in the affidavit filed in support of the petition under Section 45 of the Indian Evidence Act, the petitioner categorically stated as follows:-

“The respondent in her written statement mentioned that there was some registered power deed dated 24.02.2010 executed by her infavour of

one Prabhu. She also produced copy of power deed along with her statement. Also respondent narrated some false story regarding the power deed with me. But I strongly denied all those baseless allegation. But the signature found in the said power deed dated 24.02.2010 is an admitted one. So the Hon'ble court may direct the respondent to produce said power deed for comparison of signature, or direct to issue summon to Prabhu and make him to produce it before court in order to compare the signature of respondent in suit sale agreement with that of admitted signature in that power deed. Only then the true facts will come out, and I can able to establish my true case before the Hon'ble Court. ”

7. Therefore, only after allowing the petition under Section 45 of the Indian Evidence Act, the petitioner have to file the application under Order XI Rule 14 of the Code of Civil Procedure. Therefore, the order passed by the court below in I.A.No.1998 of 2014 in O.S.No.59 of 2014 is liable to be set aside.

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8. Accordingly, the fair and decreetal order in I.A.No.1998 of 2014 in O.S.No.59 of 2014 on the file of the II Additional District Judge, Tiruppur is set aside and this Civil Revision Petition is **allowed**. No costs. Consequently, the

connected miscellaneous petition is closed. The petitioner is directed to file necessary application under Order XI Rule 14 of the Code of Civil Procedure before the trial court to summon the original admitted documents from the respondent.

05.01.2021

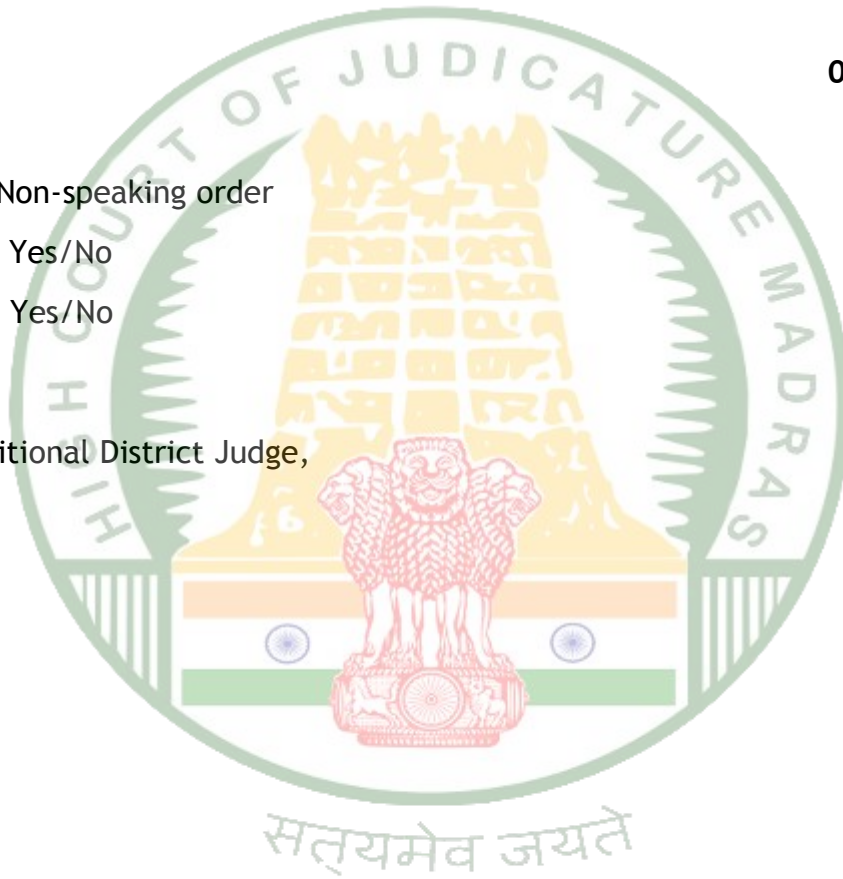
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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

To
The II Additional District Judge,
Tiruppur.



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G.K.ILANTHIRAIYAN,J.

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