

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD)No.1219 of 2020

and

CMP.No.6590 of 2020

[Through Video Conferencing]

1.M.Sundaramoorthy

2.N.Vasantha

... Petitioners/Defendants

VS

1.G.Krishnaveni

2.G.Ramesh

3.G.Revathi

4.P.Manjula

... Respondents/Plaintiffs

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the fair order and decreetal order dated 31.01.2020 made in I.A.No.3 of 2019 in O.S.No.25 of 2013 on the file of the learned Principal District Munsif, Tiruvallur.

For Petitioners : Mr.A.Babu

For Respondents : Mr.J.R.K.Bhavanantham

ORDER

The defendants in O.S.No.25 of 2013 now pending on the file of the Principal District Munsif Court, Tiruvallur are the revision petitioners herein.

2.They are aggrieved by the order dated 31.01.2020 in I.A.No.3 of 2019.

3.The said Interlocutory Application had been filed by the revision petitioners/defendants under Order XXVI Rule 10 A of the Code of Civil Procedure seeking appointment of an Advocate Commissioner for receiving 3 documents namely Exs.B6, B7 and B8 and to compare them with Exs.B32, B33 and B34 which documents had been received from the Sub Registrar Office at Thiruvallur.

4.The purpose for such comparison is to find out whether the signature found in both documents are of the same person. It is also stated that the thumb impression may also be compared.

5.The suit is now at the stage of arguments. Recording of evidence had concluded. Both parties do not complain that opportunity had not been granted during the course of adducing evidence.

6. Various contentions are put forth over which it may not be proper on my part to delve on particularly, since it might touch on the merits of the contentions of the parties.

7. Let me restrict myself to the issue of comparison of signatures and thumb impression found in Exs.B6, B7 and B8 which that of what is stated to be admitted signatures in contemporaneous documents namely Exs.B32, B33 and B34.

8. There had been an earlier round of litigation seeking similar relief in I.A.No.1631 of 2017. That application came to be dismissed on 27.02.2018. At that particular point of time Exs.B6, B7 and B8 were requested to be compared with the documents available with the office of the Sub Registrar.

9. That order was taken up in revision in CRP(PD) No.2768 of 2018 and by order dated 23.06.2021, a learned Single Judge of this Court had dismissed the said revision petition.

10. It had been stated that the execution of B6, B7 and B8 itself had been denied and therefore the learned Judge held that the dismissal of the petition

by the District Munsif was correct in law and on facts.

11.As stated above a subsequent application came to be filed.

12.That application was also dismissed by the learned District Munsif. In the course of order he pointed out the order in the earlier revision petition and stated that the petitioners/defendants are trying to get the same relief which had been rejected again by filing an application for the very same relief.

13.It was stated that once an application has been dismissed after appreciation of the facts then a second application for the same relief cannot be entertained.

14.This observation is seriously objected by Mr.A.Babu, learned counsel for the revision petitioner who pointed out that now contemporaneous documents namely B32, B33 and B34 are available and therefore, the signatures therein could be compared with Exs.B6, B7 and B8.

15.However, Mr.J.R.K.Bhavanantham, learned counsel for the respondents disputed such contention. The learned counsel stated that the

earlier order in the Civil Revision Petition mentioned above is binding on the revision petitioners and the Court may not pending by comparing signatures in the documents, execution of which contention is denied.

16.Mr.A.Babu, learned counsel also relied on two judgments namely ***(1996) 2 SCC 704 (O.Bharathan vs. K.Sudhakaran and another)*** and also ***(1998) 3 Law Weekly 407 (Bomma Naicken vs. Chinna Gounder and another)***.

17.The proposition that it would not be advisable for any Court indulges in comparing the signatures in a doubt, by itself is correct, since the Presiding Officer are not experts to do so.

18.Order XXVI Rule 10 (A) is as follows:

“Commission for scientific investigations.-

(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.”

19.If in the opinion of the District Munsif, on examination of the evidence available it would be advisable to seek the assistance of experts, then as provided under Order XXVI Rule 10 (A), the Court in the interest of justice can always issue a commission.

20.I would thus give a liberty to the learned District Munsif to, at that stage, if it is deemed required, come forward for appointment of an Advocate Commissioner to forward the documents for comparison of signatures and thumb impressions.

21.Let the Court consider the arguments by either side and to come to a conclusion based on evidence and pleadings.

22.I would therefore refrain from interfering with the order under revision and would rather direct the learned District Munsif to proceed further with analyzing the documents, analyzing the pleadings, analyzing the evidence on the documents and pleadings and thereafter come to a conclusion whether in the interest of justice, appointment of a commissioner is required or not.

23.No further directions are required and I am confident that the suit itself would be disposed of within a reasonable period of time. If the learned District Munsif has an iota of doubt then in the interest of justice he/she may take a decision to forward the documents for verifying the signatures/thumb impressions.

24. With the above directions, the Civil Revision Petition is disposed of. Consequently, the connected miscellaneous petition also stands closed. No order as to costs.

06.07.2021

Index:Yes/No
Internet:Yes/No
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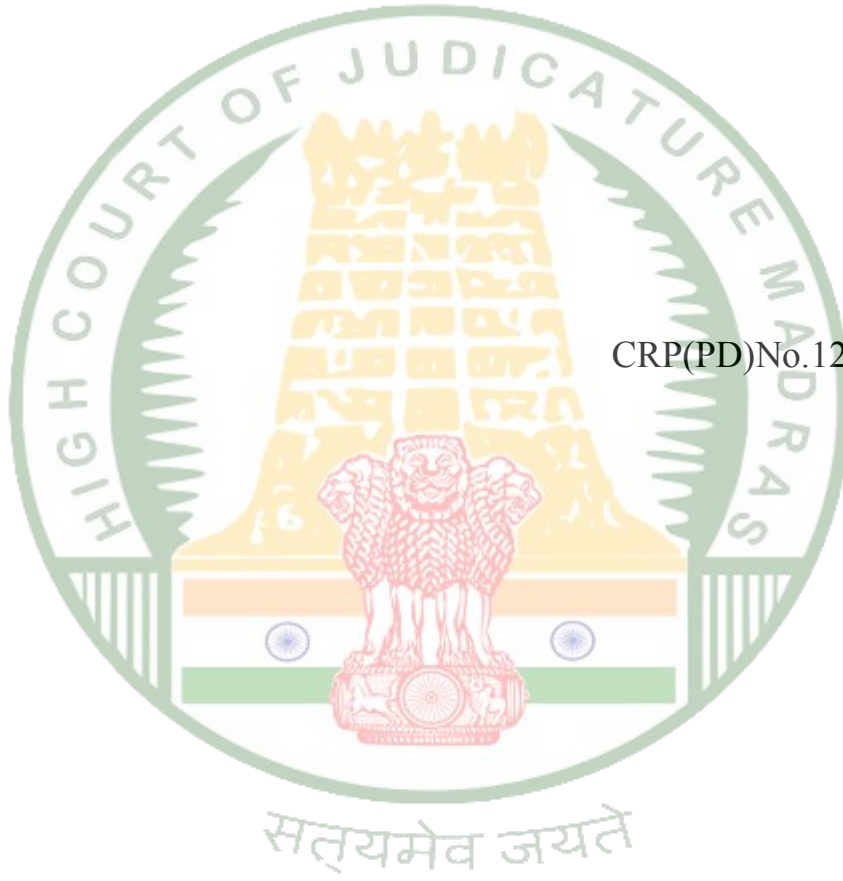
To

1.The Principal District Munsif, Tiruvallur.

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C.V.KARTHIKEYAN, J.

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