



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 03.12.2021

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD).No.3921 of 2016

and

C.M.P.No.19987 of 2016

G.Raji

.. Petitioner

**Vs.**

1.Selvi

2.Balu

.. Respondents

**Prayer:** This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.12.2015 made in I.A.No.54 of 2014 in O.S.No.45 of 2008 on the file of the II Additional Sub Court, Villupuram.

For Petitioner : Mr.N.Suresh

For Respondents : No appearance

**ORDER**

This Civil Revision Petition is filed to set aside the judgment and decree dated 08.12.2015 made in I.A.No.54 of 2014 in O.S.No.45 of 2008 on the file of the II Additional Sub Court, Villupuram.



WEB COPY

2.The petitioner is the plaintiff and respondents are the defendants in O.S.No.45 of 2008 on the file of the II Additional Sub Court, Villupuram. The petitioner has filed the said suit for specific performance of agreement of sale or in alternative, direction to the respondents to pay the advance amount paid by the petitioner together with interest at the rate of 12% per annum. The respondents filed written statement and are contesting the suit. The trial commenced, both the petitioner and respondents let in evidence and closed their evidence. The suit was posted for arguments. At that stage, the petitioner filed I.A.No.54 of 2014 under Order XXVI Rule 10(A) of C.P.C., for appointment of Advocate Commissioner to get opinion from the handwriting expert with regard to the signature in Exs.A1 and A2 with admitted signature in the documents filed by the respondents. According to the petitioner, the originals of Exs.A1 & A2 are with the respondents and the petitioner has marked the xerox copies of these documents. The respondents denied their signature in Exs.A1 and A2 in the written statement. Hence, it is necessary to direct the respondents to produce the documents prior to 31.12.2004 containing the signature, to send the same along with Exs.A1 and A2 to verify the signature and to get opinion from the expert. The respondents filed counter affidavit and stated that the application filed by the petitioner is a



WEB COPY

belated one. The petitioner filed application only to drag on the proceedings, after closure of evidence by both sides, arguments advanced on behalf of the respondents and the suit was posted for argument of the petitioner, which is not maintainable. The signature in the xerox copies cannot be considered by handwriting expert to give opinion with regard to the genuineness of signature in the xerox copies and prayed for dismissal of the application.

3.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the application holding that signature in the xerox copies cannot be compared and the application is not maintainable.

4.Against the said order of dismissal dated 08.12.2015 made in I.A.No.54 of 2014 in O.S.No.45 of 2008, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner contended that the Tribunal failed to see that the originals of Exs.A1 and A2 are with the respondents. The learned Judge erred in dismissing the application on the ground that the xerox copies cannot be sent to get opinion from the



handwriting expert. The order of the learned Judge is perverse. In support of his contention, the learned counsel relied on the judgment of the Hon'ble Apex Court reported in ***CDJ 2008 APHC 654 [Janachaitanya Housing Ltd Vs. Divya Financiers]*** and submitted that the application for appointment of Advocate Commissioner to get opinion from the expert with regard to the signature in the documents can be filed at any stage of the suit.

6.Though notice has been served on the respondents and their names are printed in the cause list, there is no representation for them either in person or through counsel.

7.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

8.From the materials available on record, it is seen that the petitioner is challenging the order dismissing the application for appointment of Advocate Commissioner to get opinion from the handwriting expert with regard to the signatures in Ex.A1/agreement of sale and Ex.A2/receipts issued by the respondents, on the ground that the respondents denied their signatures in the



written statement filed by them and contended that the signatures in agreement of sale and receipts are forged. The order of the learned Judge is confirmed for the following reasons:-

(i)The petitioner has come out with the application for appointment of Advocate Commissioner to get opinion from the handwriting expert at the fake end of the trial after arguments were advanced by the counsel for the respondents.

(ii)Their signature in the xerox copies cannot be considered by the handwriting expert to give opinion with regard to the genuineness of signature found in the xerox copies.

(iii)The petitioner has not filed any document containing admitted signature of the respondents during contemporary period and he has not even mentioned, which document has to be compared along with the disputed signature.



9.The learned Judge has considered all the materials in proper perspective and rightly dismissed the application. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

10.For the above reasons, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

**03.12.2021**

vkf

Index : Yes / No  
Internet : Yes / No

To  
The II Additional Sub Judge,  
Villupuram.

**V.M.VELUMANI, J.**



WEB COPY



C.R.P. (PD) .No.3921 of 20

vk

C.R.P.(PD).No.3921 of 2016  
and C.M.P.No.19987 of 2016

03.12.2021