

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.08.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.1717 of 2021

and C.M.P. No. 13362 of 2021

1.N.V.S.Amarnath

2.N.A.Susila

... Petitioners

Vs.

1.M.Saravanan

2.S.Kanimozhi

3.A.Sampath

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the plaint in O.S. No.360 of 2020 pending before the file of Hon'ble Court of the District Munsiff Court, Salem, by allowing this Revision Petition.

For Petitioner : Mr. J.Arokhiaraj

For Respondents : No appearance

O R D E R

This petition is filed to strike off the plaint in O.S. No.360 of 2020 pending on the file of the District Munsif Court, Salem.

2. This petition is filed primarily on the ground that the respondents / plaintiffs have created Usufructuary deed dated 29.11.2019, forging the signature of the first defendant. A criminal case was lodged in this regard in Cr.No.17 of 2020 on the file of CCB Salem City Police Station, for the offence under Sections 420, 465, 468 & 471 IPC. The handwriting expert's report states that there are dissimilarities in the writing habits between the Specimen signatures and the Questioned signatures and it leads to a conclusion that Questioned signature marked as Q1 to Q6 and Specimen signature marked as S1 to S10, are different. According to the learned counsel for the petitioners this handwriting expert's report makes it clear that the signature in the Usufructuary deed dated 29.11.2019, is not that of first defendant and it is not a true document and a forged document. The plaintiffs filed a suit on the basis of Usufructuary deed and therefore, the suit is not maintainable. Proceeding with the suit will amount to abuse of process of law and therefore, the present petition is preferred to strike off the plaint.

3. Reading of the plaint shows that the plaintiffs filed the suit seeking the relief of declaration that the notice sent by defendants 1 and 2 on 02.09.2020 and the notice sent by the second defendant on 05.09.2020 have to be declared as null and void; the permanent injunction restraining the defendants from interfering with the plaintiffs' possession and enjoyment of the property; not to remove the machineries of the plaintiffs' and not to disturb the possession of the plaintiffs' in the suit property for eleven years as per the terms of Usufructuary mortgage deed dated 29.11.2019.

4. The case of the plaintiff is that they are doing dyeing business in the name of 'Sri Murugan Dyeing Works' in the suit property after entering into agreement. It is seen that prior to the Usufructuary deed dated 29.11.2019, there were agreements dated 08.12.2011, 20.02.2012, 08.12.2016, 08.11.2017 and 19.11.2018, between the plaintiffs and defendants, in connection with the running dyeing business in the suit property. It is also claimed that the plaintiff paid Rs.50,00,000/- as advance. There are other transactions narrated in the plaint. Finally, Usufructuary deed dated 29.11.2019, was said to have been executed by the plaintiff and the defendants to run the dyeing business for eleven years. The defendants sent legal notices to the plaintiffs dated 02.09.2020 and 05.09.2020. This necessitated the filing the suit for the reliefs

aforementioned.

5. It is seen from the documents filed in the typed set of papers that the petitioners / defendants filed the rental agreements. The averments made in the plaint and the documents filed in support of the petitioner's case shows that the plaintiffs are the tenants in the suit property. Now the genuineness of Usufructuary mortgage deed dated 29.11.2019, is challenged on the basis of handwriting expert's report dated 15.12.2020. This report was given by Forensic and Biometric Investigation Services. It appears that the handwriting expert's report was done behind the back of the plaintiffs. The handwriting expert's report is only an opinion of the expert and it has to be proved in the Court in the manner known to law. The handwriting expert's report alone cannot be relied by the Court for arriving at the conclusion that the signature found in the Usufructuary mortgage deed dated 29.11.2019, is not that of the first defendant. This report has to be proved by summoning the concerned expert and examining him in the Court. Therefore, at this stage, the petitioners cannot claim their relief of striking off the plaint on the basis of handwriting expert's report alone. As already indicated there are evidences available to show that the plaintiffs are in possession and running the dying unit in the suit property. There were rental

agreements and exchange of notices. There is sufficient cause of action for filing the suit. This suit is no way barred under any law. Therefore, this Court is of the considered view that the prayer to strike off plaint in O.S. No.365 of 2020 pending on the file of learned District Munsif, Salem, cannot be entertained.

6. In this view of the matter, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Learned counsel for the petitioners pleaded for early disposal of the suit. The suit is of the 2020. It is submitted that the pleadings have been completed and the case is pending trial. Therefore, the learned District Munsif, Salem is directed to dispose the suit as expeditiously as possible.

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Index: Yes / No

Speaking order / Non speaking order

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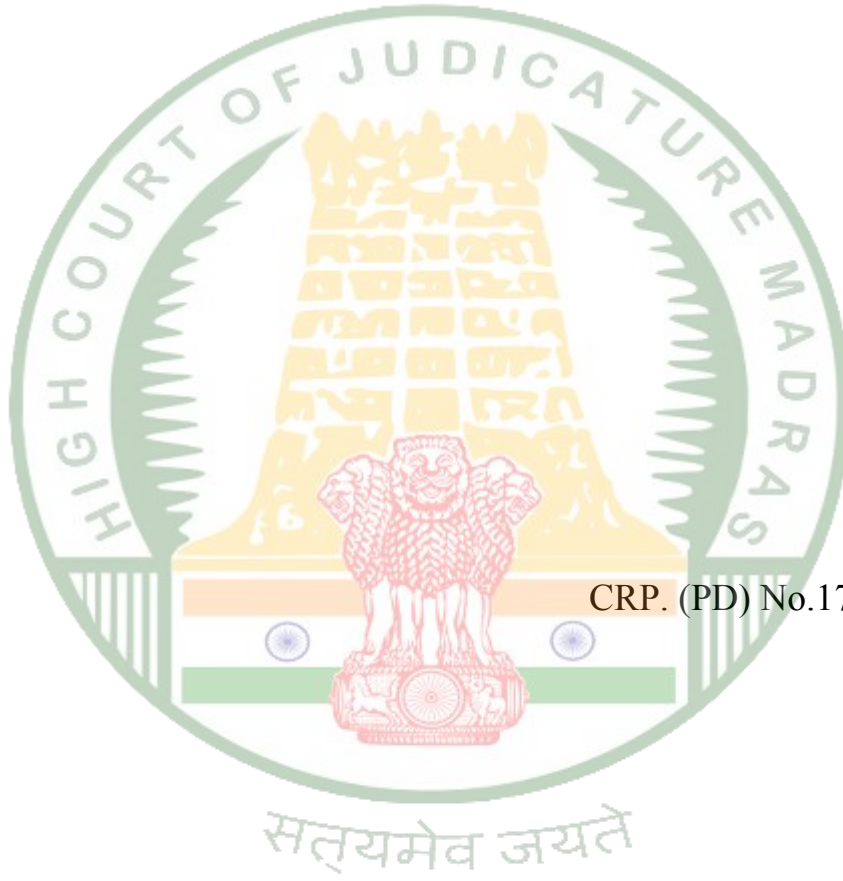
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Copy To:

The District Munsif, Salem.

G.CHANDRASEKHARAN. J.,

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