



WEB COPY



CRP.(PD).No.2307/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.2307/2019 and CMP.No.15017/2019

[Video Conferencing]

K.Murugesan

.. Petitioner

Vs.

N.Manickam

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the above C.R.P. to set aside the fair order and decreetal order dated 09.04.2019, passed by the learned I Additional District Judge of Salem, in I.A.No.2/2019 in O.S.No.108/2012.

For Petitioner	:	Mr.K.Ramanraj
For Respondent	:	Mr.R.Karthikeyan

ORDER

- (1) This Civil Revision Petition is directed against the order dated 09.04.2019 passed in I.A.No.2/2019 in O.S.No.108/2012 on the file of the learned I Additional District Judge of Salem.
- (2) Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:



CRP.(PD).No.2307/2019

WEB COPY

- (3) The revision petitioner is the plaintiff in the Suit in O.S.No.108/2012 on the file of the District Court, Salem. The Suit is for specific performance of an Agreement of Sale dated 05.04.2010. It is the case of the revision petitioner/plaintiff that the defendant/respondent had entered into the Sale Agreement for a total consideration of Rs.15 lakhs on 05.04.2010 and that a sum of Rs.7 lakhs was paid by the revision petitioner/plaintiff on the same day to the defendant/respondent.
- (4) However, in the written statement, the execution of the Sale Agreement was specifically denied by the defendant/respondent and it is stated that Sale Agreement is fabricated by the revision petitioner/plaintiff. Though the Suit was filed in the year 2012, and written statement was filed immediately after the Suit, the defendant/respondent filed an application in I.A.No.2/2019 for appointment of an Advocate Commissioner to send the Sale Agreement dated 05.04.2010 containing the disputed signature of the defendant/respondent with the admitted signature found in the Sale Deed dated 30.03.2007 and also in the Sale Deed dated 22.06.2009. The said application was allowed. Aggrieved by the



WEB COPY



CRP.(PD).No.2307/2019

same the revision petitioner/plaintiff has preferred the above Civil Revision Petition.

- (5) Learned counsel appearing for the revision petitioner submitted that the petition filed by the defendant/respondent was highly belated and if such applications are to be entertained, it will lead to unnecessary delay. Learned counsel then submitted that the evidence of the defendant/respondent has been closed and that the application if allowed would lead to great injustice to the revision petitioner/plaintiff. Learned counsel then submitted that there is some risk in sending the original document which is in the custody of Court as there is every possibility of the document being tampered or lost in transit. Therefore, it is submitted that the present Civil Revision Petition should be allowed.
- (6) It is true that there is a huge delay in filing a petition for sending the documents to the expert. However, this Court *prima facie* satisfied that the discretion had been properly exercised by the Lower Court giving cogent reasons, and nobody can have any serious objection to get an expert's evidence which is relevant in this case.



CRP.(PD).No.2307/2019

(7) WEB COPY

When the execution of the Suit Agreement is specifically denied, if the defendant/respondent has not filed the application before the trial stage, he will be put to undue hardships and embarrassment, at the later stage, if he want to get expert's evidence.

(8) The main issue that has arisen for consideration for trial is whether the Suit Agreement was executed by the defendant/respondent. By getting the expert's opinion, it will certainly help the Court in resolving the main issue. The expert's evidence will have relevance and it will be in the interest of both side to get the opinion of expert.

(9) Learned counsel appearing for the revision petitioner is more concerned about the safety of the document namely original, of the Sale Agreement if it is sent out of Court. It has now become a practice that experts opinion is obtained by appointing an Advocate Commissioner who would take sufficient number of photocopies of the disputed signatures which can be compared with the signatures in other admitted documents. In this case, the documents which are sought to be compared with the Suit Agreement are the registered Sale Deeds in which the respondent is a party. Though one of the



WEB COPY



CRP.(PD).No.2307/2019

documents was executed in the year, 2007, this Court is of the view that this will be an additional document as the document which was executed in 2009 is also available.

- (10) Sending another document for expert's opinion may enable the expert to be more accurate. The Court need not send the documents for expert's opinion unless sufficient reasons are given for sending the document containing the signatures to the expert. Learned counsel also suggested that the Court should make an attempt to compare the signature and that is not necessary to get opinion of expert in all cases.
- (11) Having regard to the nature of plea and circumstances, this Court is unable to interfere with the order merely because the application was filed belatedly or that the Court has not assigned sufficient reasons to send the document for experts opinion. The Trial Court found sufficient reasons for allowing the application and there is no error in the order especially when the expert's opinion is likely to help the Court to resolve the issue more effectively.
- (12) The only other point raised by the revision petitioner/plaintiff is about sending the original document to the experts. It has been



WEB COPY



CRP.(PD).No.2307/2019

observed earlier, that the original need not be send to the experts. It is enough if the Advocate Commissioner takes photocopies of the document and send it along with the documents containing the admitted signatures of respondent/defendant. This Court directs the Advocate Commissioner to take enough photocopies of the Suit Agreement and to send the document along with the two Sale Deeds containing the admitted signatures for expert's opinion.

- (13) Hence, this Court for the reasons stated above, is not inclined to entertain the Civil Revision Petition. Accordingly, this Civil Revision Petition is **dismissed** and the order dated, 09.04.2019 passed in I.A.No.2/2019 in O.S.No.108/2012 on the file of the learned I Additional District Judge of Salem is confirmed. Consequently, connected miscellaneous petition is closed.

03.12.2021

cda

Internet : Yes

To

The I Additional District Judge of Salem.



WEB COPY



CRP.(PD).No.2307/2019

S.S.SUNDAR, J.,

cda

CRP.(PD).No.2307/2019

03.12.2021