

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2021

CORAM

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

CRP.PD.No. 3145 of 2017

and

CMP.No.14770 of 2017

Sundari

... Petitioner

Vs.

Marimuthu

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decretal order of District Munsif-cum-Judicial Magistrate, Nannilam dated 22.02.2017 made in I.A.No.216 of 2015 in O.S.No.14/2015 and allow the said application.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.D.Padmanabhan

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.216 of 2015 in O.S.No.14 of 2015 dated 22.02.2017 on the file of the learned District Munsif-cum-Judicial Magistrate,

Nannilam, thereby, dismissing the petition filed by the petitioner to send for the agreement for sale dated 10.05.2003 for comparison of the signature with admitted signature(s).

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed the suit for bare injunction. While filing the written statement, the respondent sought counter claim on the strength of the agreement for sale dated 10.05.2003. The petitioner filed a reply statement and categorically denied the signature found in the alleged agreement for sale dated 10.05.2003. Therefore, immediately she filed a petition for comparison of signature by expert's opinion. The Court below did not dispose of the same and as such, the petitioner was constrained to file C.R.P.No.234 of 2017 before this Court for speedy disposal of the said petition for comparison of signature.

3. This Court observed by an order dated 30.01.2017 in C.R.P.No.234 of 2017 that the defendant has sought for specific performance and they sought for comparison of signature which is necessary and this Court directed the trial Court to dispose of the I.A within the stipulated time. The

Court below dismissed the said petition on two grounds that the petitioner failed to state about the admitted signature(s) in the affidavit. Further, on the ground that the evidentiary value of the expert's opinion is very less and it cannot be used to prove the case.

4. On a perusal of the reply statement filed in the counter claim, the petitioner categorically denied the signature found in the agreement for sale dated 10.05.2003 and avered that it is fabricated one. While being so, it is just necessary to compare the signature found in the agreement for sale with the admitted signature(s). In fact, the Court below recorded that the petitioner produced the sale deed of the years 1978, 1979 and 1989 along with the petition for comparison of signature and expert's opinion and even then, the Court below recorded that the petitioner failed to state anything in respect of admitted signature(s) in the affidavit. Though the petitioner failed to aver anything about for admitted signature(s) found in the document to be compared with, the petitioner produced the sale deed of the years 1978, 1979 and 1989 to compare the signature in the agreement for sale. Further, it is not the case of the petitioner that the expert's opinion has evidentiary value to decide the suit. It is only a material evidence for the plea taken by

the petitioner that the signature found in the alleged agreement for sale dated 10.05.2003 is a forged one. Therefore, it is just and necessary for the petitioner to compare the signature with admitted signature(s) by expert's opinion.

5. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.216 of 2015 in O.S.No.14 of 2015 dated 22.02.2017 is set aside. The Court below is directed to appoint an Advocate Commissioner to get expert's opinion by comparing signature(s) found in the agreement for sale dated 10.05.2003 with the admitted signature(s) of the petitioner herein. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

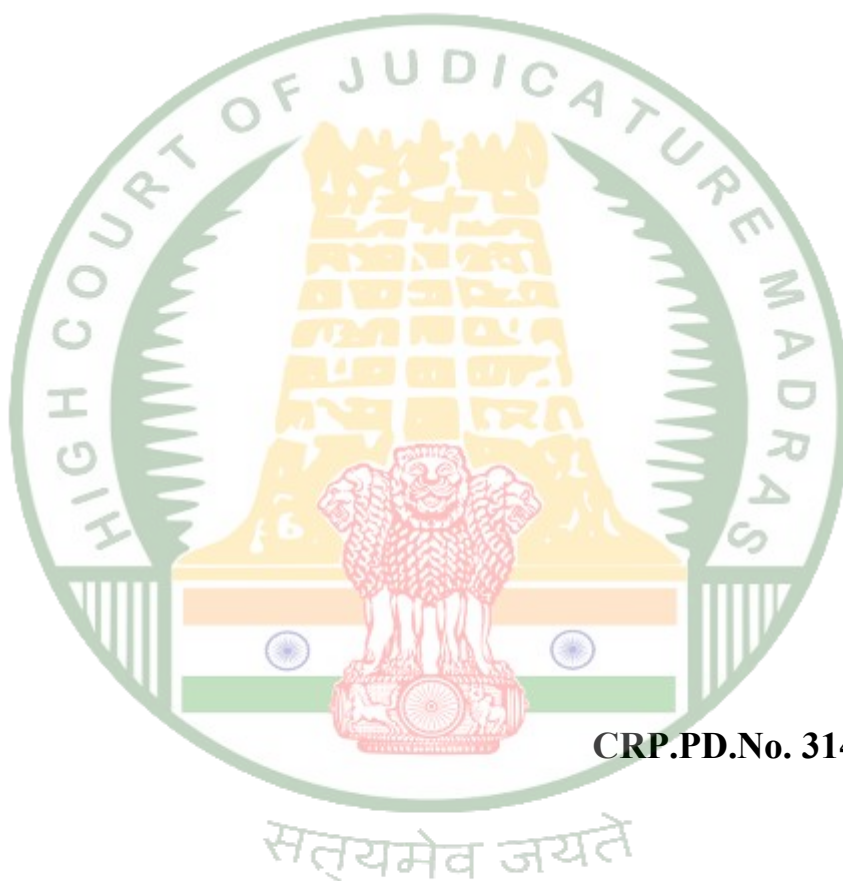
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To

The District Munsif-cum-Judicial Magistrate, Nannilam.

G.K.ILANTHIRAIYAN,J.

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