

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3167 of 2017
and C.M.P.No.14828 of 2017

K.Sundararaj

... Petitioner

Vs.

1.R.Subramaniam

2.R.Sellamuthu

3.P.Sellamuthu

4.R.Palanisamy

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.08.2017 made in I.A.No.827 of 2017 in O.S.No.218 of 2004 on the file of the District Munsif Court, Kangeyam.

For Petitioner : Mr.S.Parthasarathy Senior Counsel
for Mr.P.Dinesh Kumar

For R1, R3 and R4: Mr.M.Guruprasad

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

Civil Revision Petition is filed against the fair and decretal order dated 17.08.2017 made in I.A.No.827 of 2017 in O.S.No.218 of 2004 on the file of the District Munsif Court, Kangeyam.

2.The petitioner is plaintiff and respondents are the defendants in O.S.No.218 of 2004 on the file of the District Munsif Court, Kangeyam (earlier numbered as O.S.No.185 of 2001 on the file of the Sub Court, Dharapuram). The petitioner filed the said suit for declaration that Power of Attorney dated 26.02.2001 registered on the file of the Sub-Registrar's Office, Vellakovil, in favour of the 2nd respondent is forged and void and injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit schedule property. The respondents filed written statement. After trial, the suit was decreed by the judgment and decree dated 15.06.2006, against which, the 2nd respondent filed First Appeal in A.S.No.32 of 2006 and the same was allowed by judgment and decree dated 25.01.2007. Challenging the said judgment, the petitioner filed Second Appeal in S.A.No.429 of 2007

before this Court. This Court set aside both the judgments of the trial Court as well as the First Appellate Court and remanded the suit for fresh consideration on merits. The petitioner after remand filed I.A.No.827 of 2017 under Order XXVI Rule 10(B) and Section 151 of C.P.C. read with Section 45 of Evidence Act, for appointment of Advocate Commissioner and direct the Advocate Commissioner to bring the documents Exs.X2, X3 and X4 along with admitted signatures referred in the petition for expert's opinion.

3.According to the petitioner, the execution of the Power of Attorney dated 26.02.2001 was by fraud and impersonation. Subsequently, he was abducted by the respondents and his signatures were obtained in the document in the Sub-Registrar Office, Vellakovil. While remanding the case, this Court in the Second Appeal held that the petitioner has not taken any steps to verify his signatures in Exs.X3 to X5 with handwriting expert. Hence, it is necessary to get expert's opinion.

4.The respondents filed counter affidavit, denied all the averments

and stated that thumb impressions in the said documents were verified by the expert, it was proved that said thumb impressions are that of petitioner and the same was proved in Crime No.257 of 2001. In view of the same, there is no necessity to verify the signatures in the said documents and prayed for dismissal of the said I.A.

5. The learned Judge considering the averments in the affidavit, counter affidavit and the fact that thumb impressions in the documents Exs.X2, X3, X4 and X5 were proved to be that of petitioner, held that the claim of the petitioner to verify the signatures in the said documents is not acceptable and dismissed the I.A.

6. Against the said fair and decretal order dated 17.08.2017 made in I.A.No.827 of 2017 in O.S.No.218 of 2004, the petitioner has come out with the present Civil Revision Petition.

7. The 2nd respondent was set exparte before the trial Court. Notice

sent to the 2nd respondent has been returned with an endorsement as 'unclaimed'.

8.Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1, 3 and 4 and perused the entire materials on record.

9.From the materials on record, it is seen that the petitioner has come out with present application seeking comparison of signatures in Exs.X2, X3 and X4 with admitted signatures in Exs.A15, A18 and A19. The learned Senior Counsel appearing for the petitioner also contended that the said application is filed as this Court observed in the judgment in the Second Appeal that the petitioner has not taken any steps for verification of the signatures in the documents. From the materials on record, it is seen that the petitioner has not denied that thumb impressions in the said documents were verified by the expert and proved to be that of the petitioner. The petitioner has stated that his signatures in

the documents were taken forcibly by abducting him. In view of the said admission, it is seen that the petitioner has admitted that he signed in the documents by force of the respondents. In view of the same, it is for the petitioner to prove that he did not sign in the documents voluntarily and it was obtained by force. For the above reasons, the petitioner is not entitled to the relief sought for in the I.A. The learned Judge dismissed the I.A. by giving cogent and valid reasons. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

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

सत्यमेव जयते

30.09.2021

Index : Yes/No
Internet: Yes/No
kj

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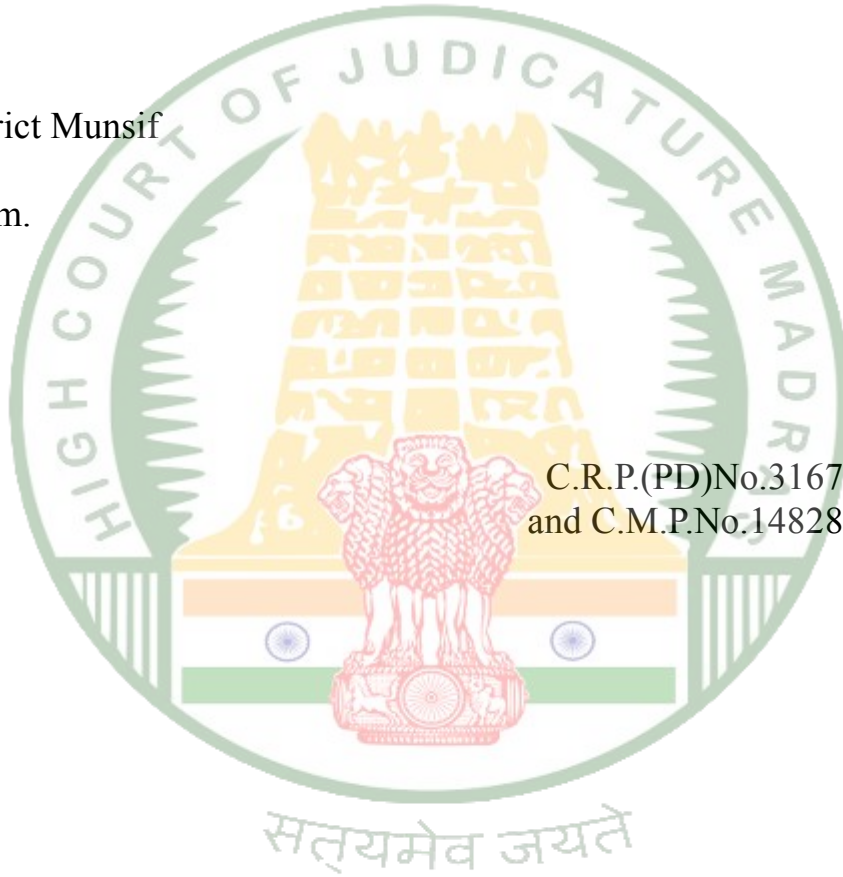
V.M.VELUMANI,J.

Kj

To

The District Munsif

Kangeyam.



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