

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P. (PD) .No.609 of 2017

and

CMP.No. 3132 of 2017

1.M.Periyasamy
2.S.Radhamani
3.M.Thangaraj
4.C.Saraswathi
5.K.Rathanam

.... Petitioners

Versus

1.T.Karpagam
2.P.Easwaramoorthy
3.S.Karthikeyan
4.T.Ramya

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.01.2017 made in I.A. No.1 of 2016 in O.S.No.35 of 2012 on the file of the II-Additional Subordinate Judge, Erode.

For Petitioners : Mr. M.Guruprasad

For R1 : Mr.M.N.Kathir
for Mr.G.Pavendhan

For R2 to R4 : Notice served

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order dated 03.01.2017 made in I.A. No.1 of 2016 in O.S. No.35 of 2012 on the file of the II-Additional Subordinate Judge, Erode, thereby dismissing the Petition seeking to send for the admitted signature and thumb impression made in the agreement for sale dated 13.06.2002 for handwriting expert opinion .

2.The Petitioners are the defendants 1 to 5, the first respondent is the Plaintiff and the respondents 2 to 4 are the

defendants 6 to 8 in the suit. The first respondent filed the suit for specific performance and permanent injunction on the strength of the agreement sale dated 13.06.2002. The suit was filed in the month of January 2012. According to the first respondent, after the sale agreement, on 15.02.2005, the second defendant had received a sum of Rs.1,50,000, thereafter, the third defendant had received a sum of Rs.1,00,000/- on 05.02.2009, and also made their endorsements in the agreement sale. Therefore, based on those endorsements made, the plaintiff calculated the period for limitation and filed the suit for specific performance.

3. On perusal of the written statement filed by the 6th defendant, it is seen that he admitted the sale agreement dated 13.06.2002 and specifically denied the subsequent payment allegedly made on 15.02.2005 and 05.02.2009 and also disputed the thumb impression as well as Signature. Therefore, first respondent filed a petition in I.A.No.1 of 2016 under Order XXVI Rule 10(2) and Section 151 of CPC., for sending the sale agreement dated 13.06.2002 with the disputed Signatures and Thumb impressions to the Director of Forensic Science Laboratory for comparison of the Signatures and Thumb impressions for expert opinion. The Court below dismissed the said petition on the ground that only to drag on the proceedings, the present petition is filed, after a lapse of 5 years of filing of the suit with a further observation that these aspects would be considered at the time of trial.

4. On perusal of the affidavit filed in support of the petition it reveals that specifically an endorsement was made by the second and third page in the agreement sale and their signatures and thumb impressions were also obtained in it. In fact, the defendants have also filed a memo to inspect the said sale agreement dated 13.06.2002, at that time, they came to know that the endorsements were false and fabricated, which was unlawfully made by the first respondent herein. Therefore, it is necessary for the first plaintiff to prove the signatures and thumb impressions contained in the endorsement made in the agreement sale are false.

5. In view of the above, the order passed by the Trial Court is set aside and the Civil Revision Petition is allowed. The Court below is directed to appoint an Advocate Commissioner to handover the sale agreement dated 13.06.2002 to the Director of Forensic Science Laboratory for expert opinion. After receiving the expert opinion, the Court below is directed to dispose of the suit, within a period of six months, after getting the

report from the Advocate Commissioner. No cost. Consequently,
the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

KLT

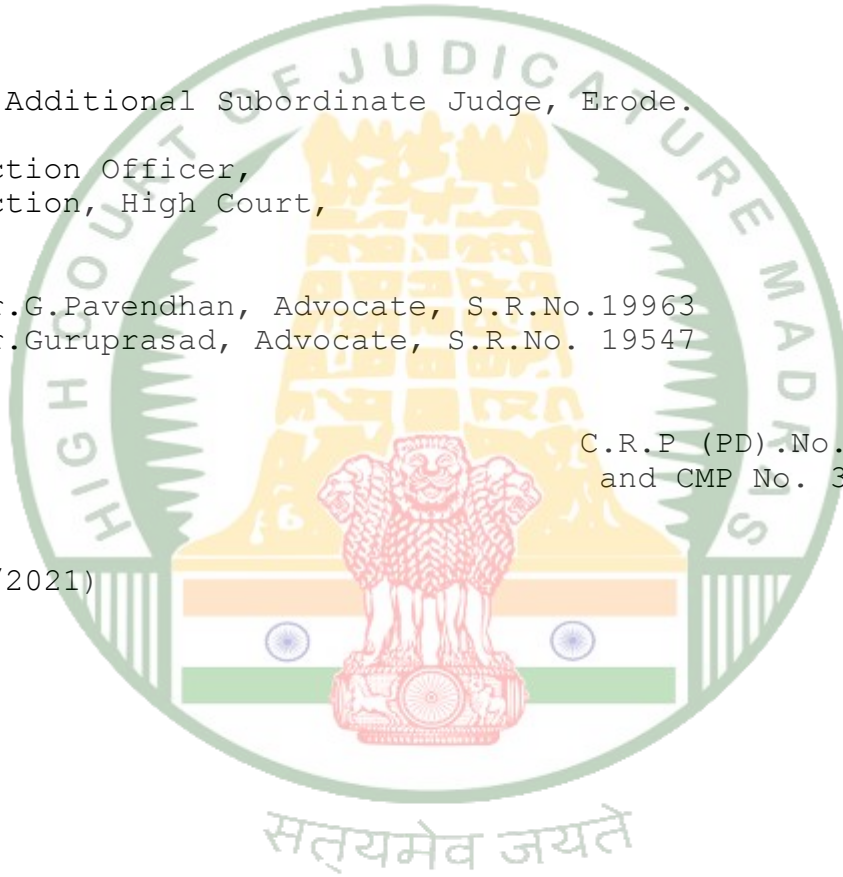
To

1. The II Additional Subordinate Judge, Erode.
2. The Section Officer,
V.R.Section, High Court,
Madras.

+1cc to Mr.G.Pavendhan, Advocate, S.R.No.19963
+1cc to Mr.Guruprasad, Advocate, S.R.No. 19547

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AJB(CO)
TE (29/04/2021)



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