

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.03.2021

Date of Verdict : 16.04.2021

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRP(PD).Nos.821 and 822 2015

and

CMP.Nos. 4029 and 4030 of 2017

CRP(PD).No.821 of 2015

V.P.Somasundaram

... Petitioner

Vs.

P.Shanmugam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.01.2017 made in I.A.No.199 of 2016 in O.S.No.81 of 2009 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Prabakar

CRP(PD).No.822 of 2015

V.P.Somasundaram

... Petitioner

Vs.

P.Shanmugam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 24.01.2017 made in I.A.No.200 of 2016 in O.S.No.81 of 2009 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.R.Prabakar

COMMON ORDER

CRP(PD).No.821 of 2015 is directed against the fair and decretal order passed in I.A.No.199 of 2016 in O.S.No.81 of 2009 dated 24.01.2017 on the file of the learned District Munsif, Avinashi, thereby dismissing the petitions to send for the document No.1162/1970 dated 21.10.1970 from the office of the Sub Registrar, Avinashi.

2. CRP(PD).No.822 of 2015 is directed against the fair and decretal order passed in I.A.No.200 of 2016 in O.S.No.81 of 2009 dated 24.01.2017 on the file of the learned District Munsif, Avinashi, thereby dismissing the petition to send for the document to the Government hand writing and finger print expert for his opinion.

3. In both the Civil Revision Petitions, the petitioner is the defendant and the respondent is the plaintiff. The respondent filed a suit for declaration to declare that the respondent as absolute owner of the suit property. The petitioner filed his written statement stating that on 21.09.1970, the respondent sold the suit property to one Ramasamy Gounder for proper and valid sale consideration. He was put in possession and enjoyment of the suit property. The petitioner purchased the suit property along with the property owned by Ramasamy Gounder and the property was purchased by him for proper and valid sale consideration, after verifying the title of the property, encumbrance certificate, revenue records and other related parent documents. From the date of purchase, the petitioner is in exclusive possession and enjoyment of the suit property. Pending the suit, the respondent filed petitions seeking to send the sale deed dated 21.10.1970 from the Sub Registrar Office to the Court and seeking expert's opinion in respect of the Thumb Impression in the document dated 21.10.1970 with admitted Thumb Impression.

4. The petitioner filed a counter stated that on receipt of the suit notice from the respondent dated 26.12.2008, the petitioner replied by way of reply notice and specifically stated that the petitioner purchased the suit property from the said Ramasamy Gounder by the registered sale deed dated 03.09.1986 and from the date of his purchase, he is in possession and enjoyment of the same. Thereafter, he also constructed a Godown and building and invested more than 15 lakhs in the property premises. Now, the respondent has come forward with the petitions, that too after a period of seven years from the suit alleging that he did not execute any sale deed on 21.10.1970 in favour of the one Ramasamy Gounder and as such, he wanted to send for the same from the Sub Registrar Office to the Court and also sought for expert's opinion in respect of his Thumb Impression. He further stated that the respondent failed to produce any document to the contemporary period of the sale deed executed by him. The respondent requested to compare his Thumb Impression to be taken in the Court with the Thumb Impression of the document in the year 1970 viz., after 47 years.

5. The learned counsel for the respondent submitted that he is absolute owner of the suit property by virtue of the registered sale deed

dated 11.11.1964. The petitioner is the tenant of the suit property and constructed temporary fruit godown and doing fruit business. When the respondent demanded the petitioner to remove the construction and hand over the vacant possession, the respondent purposefully postponed to vacate the suit property. He further submitted that by the reply notice, the petitioner stated that by the sale deed dated 03.09.1986, the suit property was purchased by him from one Ramsasy Gounder; the said Ramasay Gounder purchased the suit property from the respondent by the registered sale deed dated 21.10.1970; the respondent never executed any sale deed dated 21.10.1970 in favour of the said Ramasamy Gounder and he also denied his Thumb Impression found in the alleged sale deed; therefore, the respondent is duty bound to prove his case. He further submitted that the respondent need not challenge the sale deed dated 21.10.1970, since it is fabricated and forged one. When it is fabricated one, it automatically become invalid and need not be challenged before the Court of law. Therefore, the respondent rightly prayed for declaration of title in respect of the suit property in his favour.

6. He further submitted that after allowing the petition, the Court below called for the concerned register from the Sub Registrar Office and it was also brought to the Court below. He further submitted that the signature obtained in the year 1970, now may differ. But the Thumb Impression of the respondent never change and as such, it is just a necessary to get expert's opinion by comparing the Thumb Impression found in the sale deed dated 21.10.1970 and the present Thumb Impression. Therefore, the Court below rightly allowed the petition and it does not warrant any interference by this Court.

7. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

8. On a perusal of the plaint, it is evident that the respondent simply filed a suit for declaration to declare that the suit property in his favour, without challenging the alleged sale deed dated 21.10.1970, which was registered as document No.1162/1970 in favour of one Ramasamy Gounder. That apart, the respondent did not implead the said Ramasamy Gounder as one of the parties to the suit, since allegedly the respondent

executed the sale deed in favour of the said Ramasamy Gounder and in turn the said Ramsamy Gounder executed sale deed in favour of the petitioner herein. Therefore, the respondent ought to have impleaded the said Ramasamy Gounder as a party to the suit and ought to have challenged the sale deed dated 21.10.1970 and also subsequent sale deed executed in favour of the petitioner herein. Without challenging those sale deeds, the respondent cannot simply seek a prayer to send document, dated 21.10.1970, from the concerned Sub Registrar Office to the Court and sought for expert's opinion.

9. As rightly pointed out by the learned counsel for the petitioner after a period of 47 years, the present signature or Thumb Impression of the respondent herein cannot be compared. Further, the respondent also failed to produce any contemporary documents with admitted signature or Thumb Impression of the respondent herein.

10. However, the learned counsel for the respondent relied upon the judgment of this Court dated 25.01.2021 passed in CRP.No.3813 of 2015, wherein this Court has held that it is just and necessary for the petitioner to

disprove the case of the respondents 1 and 2 and as such, allowed the petition for getting expert's opinion.

11. The learned counsel for the respondent contended that the sale deed dated 21.10.1970 is fabricated and forged one and as such need not be challenged, since the sale deed itself is void ab-initio. According to the petitioner, he purchased the suit property from the Ramasamy Gounder by the sale deed dated 03.09.1986, on the strength of the sale deed dated 21.10.1970 executed by the respondent herein. Therefore, without challenging those sale deeds, and also without adding the said Ramasamy Gounder as a party to the suit, the present petition for comparison of his Thumb Impression cannot be considered.

12. In the case on hand, the respondent is the plaintiff and he filed the present suit for declaration to declare the title in his favour in respect of the suit property. When the respondent failed to challenge the sale deed dated 21.10.1970 and subsequent sale deed executed in favour of the petitioner herein, he cannot ask for expert's opinion and also to send the document, viz., the sale deed dated 21.10.1970 from the Sub Registrar Office to the

Court, for comparison. Therefore, the judgment cited by the learned counsel for the respondent is not applicable to the facts of the case on hand.

13. In view of the above discussion, these Civil Revision Petitions are allowed and the orders passed in I.A.Nos. 199 and 200 of 2016 in O.S.No.81 of 2009 respectively, dated 24.01.2017 are set aside. The trial Court is directed to dispose of the main suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

16.04.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The District Munsif, Avinashi.
2. The Section Officer,
V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

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**orders made in
CRP(PD).Nos.821 and 822 2015**

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