

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2021

CORAM :

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(PD).No.4071 of 2018
and CMP.No.22476 of 2018

M.Manikandan ... Petitioner

Versus

R.B.Vijayalakshmi ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 25.10.2018 passed in I.A.No.748 of 2018 in O.S.No.157 of 2014 on the file of the I Additional District Judge at Salem and thus render justice.

For Petitioner : Mr.Govind Chandrasekhar

For Respondent : Ms.Zeenath Begum

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ORDER

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This Civil Revision Petition has been filed to set aside the order and decreetal order dated 25.10.2018 passed in I.A.No.748 of 2018 in O.S.No.157 of 2014 on the file of the I Additional District Judge at Salem.

2.The revision petitioner herein filed the suit for specific performance before the court below in O.S.No.157 of 2014. According to the revision petitioner, the agreement was entered between the petitioner and the respondent on 12.03.2011, to purchase the suit schedule property for a total sale consideration of Rs.55,00,000/- (Rupees fifty five lakh only), out of Rs.55,00,000/- the plaintiff had paid a sum of Rs.35,00,000/- (Rupees thirty five lakh only) as advance at the time of entering the agreement. The petitioner has to pay the balance sale consideration of Rs.20,00,000/- (Rupees twenty lakh only), within three month. The respondent/defendant herein filed the written statement denying the entire averments in the plaint, and stated that the agreement dated 12.03.2011 was a forged one. The respondent has filed an additional written statement on 19.01.2017, wherein she has specifically pleaded that the signature in the sale agreement is not of her.

3.According to the revision petitioner, he has filed an application to sent the disputed signatures in the sale agreement for the expert opinion for the comparison of the signatures in the vakalat and written statement, which were pertaining to the year 2015.

4.However, the respondent herein made a strong opposition before the court below and after hearing both the parties the court below dismissed the said application stating that the agreement was a forged one and the signature of the respondent was taken by her son in the disputed document, which was utilized by the petitioner to file the suit. So it is not a specific denial that the signature found in the document is not that of the respondent. The respondent's contention was that the signature put by her in the blank papers and stamp papers, were utilized to create the suit sale agreement.

5.By referring the Judgment of the court below, the learned counsel appearing for the petitioner submitted that in the written statement the respondent herein disputed the signatures, for the first time, in the sale agreement. Hence, he has filed the application in I.A.No.748 of 2018, for sending the signatures found in the sale agreement for expert opinion. Therefore he contended that the finding of the court below is not correct and the same is liable to be set aside.

6.Further the learned counsel appearing for the petitioner submitted that though the admitted signatures are relating to the year 2011, in the present case, it is not the signatures of the petitioner/plaintiff to prove his own signature,

but he wanted to prove the signatures of the respondent/defendant with her subsequent signatures in the vakalat and written statement with that the signatures in the sale agreement are one and the same. Therefore, there is nothing wrong to send those signatures in the vakalat and written statement for comparison with the disputed signatures in the sale agreement and prayed to set aside the order passed by the court below and allow this Civil Revision Petition.

7.The learned counsel appearing for the respondent/defendant submitted that the respondent/defendant had denied entire averments in the plaint and also submitted that the signatures in the sale agreement were forged. Therefore, any request to send the signatures for the expert opinion is unnecessary, the trial has come to the final stage and the petitioner/plaintiff has adopted only the delay tactics to postpone the further adjudication of the suit. Therefore, he contended that there is no illegality in the order passed by the court below and she prayed for dismissal of the Civil Revision petition.

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8.Upon hearing the submissions of both the learned counsel and perusal of records would show that the petitioner/plaintiff had entered into a sale agreement with the defendant on 12.03.2011, to purchase the suit schedule property for a sale consideration of Rs.55,00,000/- (Rupees fifty five lakh only),

out of Rs.55,00,000/- the plaintiff had paid a sum of Rs.35,00,000/- (Rupees thirty five lakh only) as advance at the time of entering into the sale agreement and the petitioner has to pay the balance sale consideration of Rs.20,00,000/- (Rupees twenty lakh only), within three months. As the respondent failed to execute the sale deed within three months, the petitioner filed the suit for specific performance. The respondent/defendant herein had filed the written statement on 05.01.2015, wherein, he has stated that the sale agreement was a forged one. The respondent/defendant also filed an additional written statement on 19.01.2017, wherein in the first line she had stated as follows:

“This defendant denies the signatures in the agreement, and it is forged.”

The above said denial made the petitioner/plaintiff to file the I.A.No.748 of 2018, seeking to appoint an Advocate Commissioner to take the impugned unregistered sale agreement dated 12.03.2011 to the Additional Director, (Documents) Department of Forensic Science, to compare the signatures found in the vakalat and in the written statement of the respondent by an expert.

9.From a perusal of the written statement, prima facie appears that the respondent/defendant denies the signature in the sale agreement. This would

have made the plaintiff to file the application for appointment of Advocate Commissioner to take the signature found in unregistered sale agreement to compare with the signature found in the vakalat and written statement of the respondent/defendant. However, the Court below without considering all these aspects has dismissed the application filed by the Revision Petitioner herein. The Court below held that the Court itself can compare the signature on its own. No doubt, it can be compared by the Court below by its own. But, it would be better if the court gets an expert opinion and decide the matter on merits. Hence, the dismissal of I.A.No.748 of 2018 is suffered with infirmities. Thus, the decretal order of Court below is liable to be set aside.

10. Therefore, the order passed by the Court below in I.A.No.748 of 2018 is set aside. Accordingly, this Civil Revision Petition stands allowed as prayed for. No costs. Consequently, the connected miscellaneous petition stands closed.

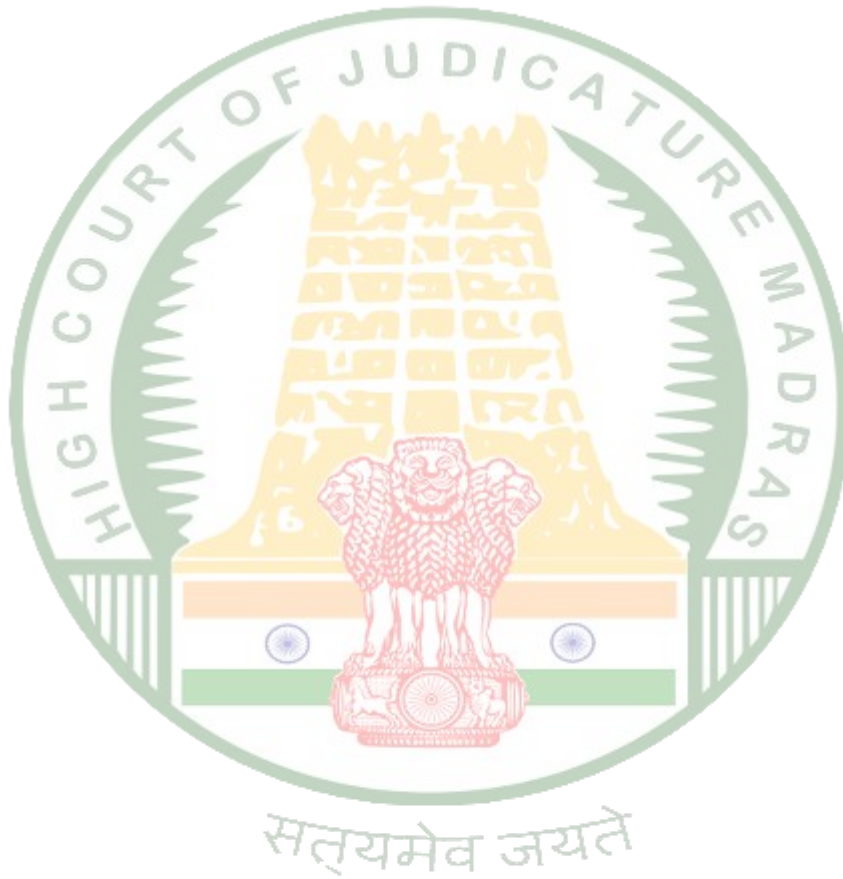
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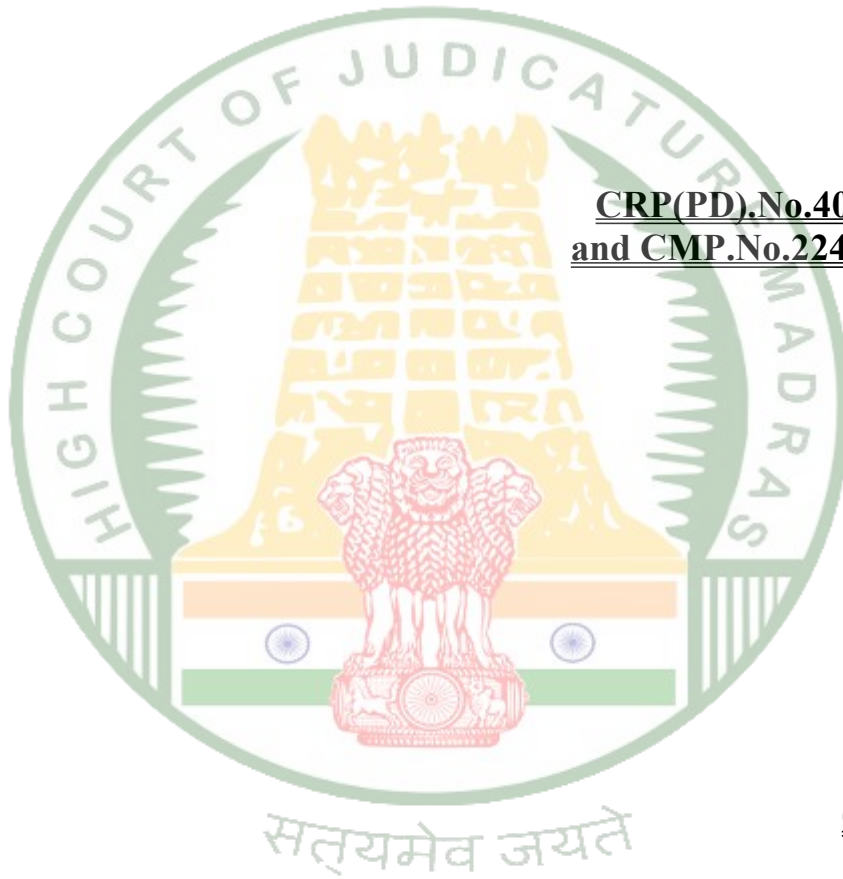
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The I Additional District Judge,
Salem.



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KRISHNAN RAMASAMY, J.,
ah/rst



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