



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 22.10.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (PD) (MD) No.2557 of 2012

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1. S.Perumal Naicker (Died)
2. Alagammal
3. S.Muruga Lakshmi
4. V.Mariyammal
5. Minor V.Abeyasri ... Petitioners
(rep. by her mother and next friend
4th petitioner)
(Petitioners 2 to 5 are brought on
record as LRS of the deceased
1st petitioner vide order dated
5.8.2021 in CMP(MD) Nos.5969
5970 and 5974 of 2021)

vs.

1. K.Rengaraj
2. S.Krishnasamy Naicker
3. Ramasamy Naicker
4. P.Poonusamy Naicker
5. Seethalakshmi
6. K.Krishnammal
7. Vijayalakshmi ... Respondents
(R2 to R7 are given up as
not necessary parties)

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and final order dated 9.11.2011 passed in I.A.No.414 of 2010 in O.S.No.12 of 2008 on the file of the Subordinate Judge, Thoothukudi.

For Petitioner: Mr.Jessi Jeeva Priya
For R1 : Mr.R.Devaraj

ORDER

The revision has been filed against the order passed by the Trial Court dismissing the petition filed under Section 45 of the Indian Evidence Act.

2. Learned counsel for the petitioners would submit that the first respondent had filed a suit for specific performance of the contract against the original revision petitioner/2nd defendant and his other relative based on a sale agreement, Ex.A1 alleged to have been executed by late Rengasamy Naicker, the paternal uncle of the petitioner in favour of the first respondent/plaintiff and the revision petitioner had taken a defence contending that the sale



agreement was not executed by his paternal uncle in favour of the first respondent/plaintiff and the specific claim of the revision petitioner is that the agreement of sale is a fabricated and forged document and the signature found in the document was not that of Rengasamy Naicker.

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3. The learned counsel for the revision petitioner would further submit that during the cross examination of PW1, the revision petitioner has marked through him Ex.B1 a plaint copy relating to O.S.No.243 of 2002 filed by late Rengasamy Naicker for the relief of declaration and injunction with regard to his property in S.No.24/4, 24/2B, 578B/2, 24/6 and 24/3 of Silukanpatti Village and Thattapaai Village. He would further submit that the signature found in the plaint copy Ex.B1 is the admitted signature of Rengasamy Naicker and the revision petitioner had disputed the signature of Rengasamy Naicker in Ex.A1 and therefore, in order to bring the truth to light, the revision petition had filed a petition under Section 45 of the Indian Evidence Act to send the disputed signature and the admitted signature of Rengasamy Naicker for comparison by a handwriting expert, whereas, the Trial Court, despite there being specific averment by the revision petitioner contending that defendants 1 and 3 to 7 had colluded and fabricated such a document, had arrived at an erroneous finding as if there was no such pleading in the written statement. He would further submit that if the documents are not sent for comparison by a handwriting expert and truth is not brought to light, the rights of revision petitioner would be defeated and thereby he would seek to set aside the order passed by the Trial Court.

4. Learned counsel for the first respondent would submit that excepting a vague averment at para 11 of the written statement that the alleged sale agreement should be a fabricated document, no other material has been produced by the revision petitioner to prove that Ex.A1 is a fabricated one and thereby Trial Court, rightly finding that no such plea had been taken in the written statement, had dismissed the petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. The revision petitioner/2nd defendant has filed a petition seeking to compare the alleged signature of Rengasamy Naicker found in Ex.A1 with his admitted signature found in Ex.B1. The revision petitioner had specifically stated at para 11 that the alleged sale agreement is a fabricated one, however, the Trial Court has wrongly rendered a finding that the petitioner had not specifically disputed the signature of Rengasamy Naicker in Ex.A1. This court is of the view that the Trial Court has committed error in making such observation. Therefore, the order passed by the Trial Court is liable to be set aside and it is, accordingly, set aside. The Trial Court is directed to take appropriate steps to call for the original



plaint in O.S.No.243 of 2002 pending on the file of the Principal District Munsif, Thoothukudi containing the admitted signature and send the same alongwith Ex.A1 containing the disputed signature of Rengasamy Naicker to the handwriting expert for comparison of the signatures.

7. With the above observation, the revision petition stands disposed of. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Subordinate Judge,
Thoothukudi.

2.The Principal District Munsif,
Thoothukudi.

+1 CC to M/s.R.DEVARAJ, Advocate (SR-32416[F] dated 25/10/2021)

+1 CC to M/s.P. JESSI JEEVAPRIYA, Advocate (SR-32714[F]
dated 26/10/2021)

C.R.P.(PD) (MD) No.2557 of 2012
22.10.2021.

MA(CO)

GC/PM(18.11.2021) 3P 5C