



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP.PD.(MD).No. 642 of 2014 and

M.P(MD).No.1 of 2014

WEB COPY

1. Lakshmanan

2. Amutha Devi ... Petitioners /Petitioners / Defendants
Vs.

Madasamy Konar ... Respondent /Respondent / Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.02.2014 passed in I.A.No. 435 of 2013 in O.S.No.92 of 2011, on the file of the District Munsif Cum Judicial Magistrate, Shencottai.

For petitioners : Mr. F.X. Eugene

For respondent : Mr. V. George Raja
for Mr. A. Arumugam

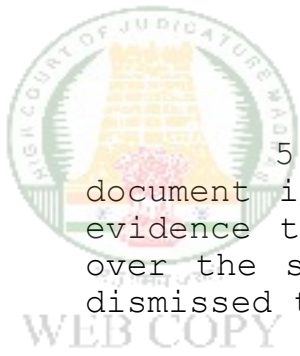
ORDER

The defendants in O.S.No. 92 of 2011 are the petitioners. This revision has been filed challenging the order rejecting their application to refer the suit document viz., Ex.B1, dated 05.02.1983 to the expert for opinion on the genuineness signature of the respondent / plaintiff.

2. The suit is one for declaration of title and permanent injunction or in the alternative for partition and separate possession of the 1/4th share in the suit properties and the same is being resisted by the petitioners / defendants contending that there was an oral partition and the same was acknowledged by the plaintiff in the receipt, dated 05.02.1983.

3. The plaintiff has denied the execution of the said receipt, dated 05.02.1983 and had claimed that it is a forged instrument. The defendants had applied to the Court seeking reference of the documents to the handwriting expert by appointing a Commissioner and to have the document compared with the signatures on the Vakalat and plaint.

4. This application was resisted by the plaintiff contending that the comparison could be made only with the contemporaneous signature and not with the signature that emanated in the year 2011 after the suit.



5. It was the further contention of the plaintiff that the document itself is an invalid instrument and it cannot be used as evidence to show the relinquishment of the right by the plaintiff over the suit property. The trial Court accepted the defence and dismissed the application.

6. I have heard Mr. F. X. Eugene, learned counsel appearing for the petitioners and Mr. V. Geroge Raja for Mr. A. Arumugam, learned counsel appearing for the respondent.

7. The learned counsel appearing for the petitioners would strenuously contend that the trial Court was not right in refusing opportunity to the defendants to lead evidence by refusing to refer the document for expert opinion.

8. Per contra, Mr. V. George Raja, the learned counsel appearing for the respondent would submit that reference to the expert can be made only for comparison with the contemporaneous signature and not subsequent signature. He has taken a specific stand in the counter affidavit that there are no admitted signatures of the year 1983 available with him.

9. Passage of considerable time between the documents sought to be referred for comparison, is pointed out as the reason for rejecting the plaintiff's request. I am of the opinion that unless the petitioners / defendants are able to produce available admitted signatures of the plaintiff, referring the document for expert opinion would be redundant. The plaintiff himself has taken a specific stand that there are no admitted signatures of the year 1983 available with him. The document cannot be referred to the expert merely because it is insisted upon by the petitioners. Therefore, I am of the opinion that the trial Court was justified in rejecting the application for reference to the expert. It is open to the defendants to let in evidence on the document and prove the document. The observations made in this order or in the order of the trial Court impugned herein will not stand in the way of the defendants proving the genuineness of the receipt, dated 05.02.1983.

10. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The District Munsif Cum Judicial Magistrate, Shencottai.

Copy To:- The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai. (2C)

+1 CC to M/s.A.ARUMUGAM, Advocate (SR-563[F] dated 08/01/2021)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-618[F] dated 08/01/2021)

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