



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.06.2021

Delivered On : 09.07.2021

CORAM

THE HONOURABLE Mrs. JUSTICE R.THARANI

C.R.P (NPD) (MD) No.2663 of 2018

and

C.M.P(MD) No.11679 of 2018

Jesuraj@Anbarasan ... Petitioner/1st Respondent/1st Defendant
-Vs-

1.Francis Bastiyan ...1st Respondent/Petitioner/Plaintiff
2.Rajasekaran
3.Anthonisamy
4.Amili ...2 to 4 Respondents/2 to 4 Respondents/2 to 4 Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the I.A.No.1348 of 2017 in O.S.No.221 of 2016 on the file of the District Munsif, Melur dated 31.07.2018.

For Petitioner	:	Mr.C.Vakeeswaran
For 1 st Respondent	:	Mr.J.Anand kumar
For Respondents 2 and 4	:	No Appearance
For 3 rd Respondent	:	Exparte (vide E.B.)

ORDER

This Civil Revision Petition is filed against the order in I.A.No.1348 of 2017 in O.S.No.221 of 2016 dated 31.07.2018, on the file of the District Munsif, Melur.

2.The petitioner herein is the first defendant, the first respondent herein is the plaintiff and the respondents 2 and 4 herein are the defendants 2 to 4 in the suit. The first respondent herein has filed a suit in O.S.No.221 of 2016 against the defendants on the file of the District Munsif, Melur. The plaintiff filed the petition in I.A.No.1348 of 2017 to sent the document for expert opinion.

3.Brief substance of the petition in I.A.No.1348 of 2017 is as follows : -

The petitioner is the plaintiff. The suit was filed for permanent injunction. The sale deed dated 12.03.2009 registered as document No.1209 of 2009 and another sale deed dated 24.06.2010 registered as document No.1730 of 2010 were denied by the first respondent in his counter in I.A.No.687 of 2016. Those documents are executed only by the first respondent and the signature and the thumb impression are to be verified, with the thumb impression taken from the first respondent in the open Court and both the thumb impressions are to be examined and a report has to be obtained from



the hand writing expert and for this reason, a Court Commissioner has to be appointed.

4.Brief substance of the counter filed by the first respondent is as follows:

The suit is ripe for trial. To delay the trial proceedings, this petition was filed by the petitioner. Utilising the fact that the first respondent is blind, the documents are created and the petition has to be dismissed.

5.Brief substance of the counter filed by the respondents 2 and 4 is as follows:

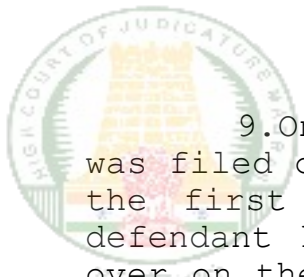
The first respondent is blind. There was a suit between the fourth respondent and first respondent in O.S.No.17 of 2007 regarding a portion of the second schedule property. After decree, if the first respondent had executed a sale deed in favour of the petitioner, the particular portion of the property in O.S.No.17 of 2007 should have been left out in the sale deed. The suit documents are fraudulent documents and there is no necessity to verify the thumb impression and the petition has to be dismissed.

6.After hearing the arguments on both side, the trial Court has allowed the petition. Against which, the revision petitioner has preferred this revision petition.

7.On the side of the revision petitioner, it is stated that the plaintiff has to prove his case by way of oral and documentary evidence. If the defendants raised a question regarding the title, the plaintiff has to file a suit for declaration. In the absence of a prayer for declaration, the respondent has no locus standi to file the petition for expert opinion. The revision petitioner has denied the execution of the sale deed. The first respondent has taken advantage of the petitioner's blindness and has created the forged sale agreement and the sale deed. Without amending the prayer for declaration, this application for expert opinion is liable to be dismissed.

8.The learned counsel for the petitioner would rely upon the judgment passed by this Court in the case of **K.P.Mahendra Babu v. K.Rajalakshmi and others** in **C.R.P. (MD)No.106 of 2018**, wherein it is stated as follows:

" By considering the facts and submissions of the learned counsel for the petitioner, the revision petitioner has filed an application for the aforesaid prayer for comparison of thumb impression of One Ponnai @ Mahali, contained in Partition Deed dated 30.05.1956 registered Document No.606/1956 and in sale deed dated 13.03.1995 registered as Document No.998 of 1995 by Sub Registrar of Palladam."



9. On the side of the respondents, it is stated that the suit was filed only for bare injunction, based on a sale deed executed by the first defendant. Before executing the sale deed, the first defendant has executed a sale agreement and possession was handed over on the basis of the sale agreement. Now with the help of other defendants, the first respondent is trying to dispossess the plaintiff. In the written statement, the execution of the sale agreement and sale deed were denied. The defendants denying the documents have not taken any steps to disprove the documents. It is the duty of the plaintiff to prove the possession of the plaintiff and he is claiming possession through the sale agreement and hence, the plaintiff is under the obligation to disprove the averment in the written statement. The plaintiff is having the right to file this petition before the commencement of the trial.

10. It is seen that the trial in the suit has not yet commenced. The suit is for injunction. The first defendant, who is the revision petitioner has filed the written statement denying the documents. The contention of the defendants is that those documents are fraudulently created. The plaintiff is claiming the possession through the sale agreement and the sale deed and he has filed the petition for expert opinion. The examination of the documents by the expert will be helpful for the trial Court to find out whether the documents were fraudulently created or they are genuine. Hence, the order of the trial Court to send the document for expert opinion is reasonable.

11. In the above circumstances, there is nothing sufficient enough to interfere in the order passed in in I.A.No.1348 of 2017 in O.S.No.221 of 2016 dated 31.07.2018, on the file of the District Munsif, Melur. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized 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 District Munsif, Melur.

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C.R.P.(MD)No.2663 of 2018(PD)

C.R.P (MD) No.2663 of 2018
09.07.2021

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