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C.R.P(PD).No.1107 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(PD).No.1107 of 2022
and C.M.P.No.5696 of 2022

A.Sampath

... Petitioner

..Vs..

1.P.Madheswari
2.Krishnaveni
3.Bhuvaneswari
4.Ganesh
5.Kokila
6.Sathiyavathi
7.Shanmugavadivu

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order in I.A.No.3 of 2020 in O.S.No.318 of 2004 on the file of the learned Principal Subordinate Judge, Salem, dated 06.12.2021.

For Petitioner : Mr.J.Prithivi

For Respondents : No appearance



C.R.P(PD).No.1107 of 2022

WEB COPY

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned Principal Subordinate Judge, Salem, dated 06.12.2021 made in I.A.No.3 of 2020 in O.S.No.318 of 2004.

2.The revision petitioner is the plaintiff and the respondents are the defendants in the suit. The plaintiff has filed a suit for specific performance in which a petition in I.A.No.898 of 2013 was filed by the 7th defendant for comparing the disputed signatures of the defendants 1 to 5 in the suit sale agreement dated 29.09.2003 with their admitted signatures. The said petition was allowed and an Advocate Commissioner was also appointed for the purpose of collecting documents and submitting it to the forensic expert as per the directions of the Court on 11.03.2014. However, on 20.01.2015, the Deputy Director of Documents Division, Forensic Sciences Department sent a letter to the Court by stating that the contemporaneous documents of the year 2000-02 are required for examination. Since those documents were not produced, the



C.R.P(PD).No.1107 of 2022

petition was dismissed on 18.08.2017 for non production. Curiously, the report of the expert also sent to the Court and it is available as a document. The defendants 1 to 4 have filed a petition in I.A.No.3 of 2020 to summon the expert and to examine him as witness and the same was allowed. Aggrieved over that, the petitioner/plaintiff has preferred this revision petition.

3.The learned counsel for the petitioner submitted that when the petition filed under Section 45 of the Evidence Act itself was dismissed subsequently due to the non-production of the contemporaneous documents as required by the expert, the consequential report of the expert dated 13.11.2018 cannot be admitted in evidence and hence the expert cannot also be called as witness.

4.Though the notice was served on the respondents and their names printed in the cause list, there is no representation on behalf of the respondents.



C.R.P(PD).No.1107 of 2022

WEB COPY

5.On perusal of the documents, it is seen that the expert had submitted his opinion dated 13.11.2018 by comparing the signatures with some admitted and specimen signatures. It is difficult to understand as to how the expert can proceed to do examination, when the contemporaneous documents as required by the expert were not produced through Court. Only if the expert is called as a witness to explain this position, certain facts about his opinion will come to light. No prejudice would be caused to the petitioner/plaintiff, if the expert is called as a witness. If the petitioner/plaintiff wishes to confront the expert about how he ventured to compare the documents, in the absence of production of the contemporaneous documents, he is at liberty to cross examine him. But reversing the order of the learned trial Judge would only confound the situation. Therefore, I do not find any reason for interference.

6.Accordingly, the Civil Revision Petition is dismissed and the order of the learned Principal Subordinate Judge, Salem, dated 06.12.2021,



C.R.P(PD).No.1107 of 2022

made in I.A.No.3 of 2020 in O.S.No.318 of 2004, is hereby confirmed.

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No costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2022

vkx

Index:Yes No

Speaking Order:Yes/No

To

1.The Principal Subordinate Judge,
Salem.

2.The Section Officer,
VR Section, Madras High Court,
Chennai.

R.N.MANJULA,J.

5/6



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C.R.P(PD).No.1107 of 2022

Vkr

C.R.P.(PD).No.1107 of 2022
and C.M.P.No.5696 of 2022

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