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C.R.P. No.2547 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.2547 of 2019
and
C.M.P. No. 16789 of 2019

R.Natarajan,
S/o. Rathinam

... Petitioner

Vs

1. N.Chinnusamy,
S/o. Late Senga Gounder @
Nallampoosari

2. Shanthi,
W/o. Chinnusamy

3. Minor Kanagavalli,
D/o. Chinnusamy

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 24.06.2019 passed in I.A.No.580 of 2018 in O.S.No.42 of 2017 on the file of II Additional District Judge, Salem.



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For Petitioner : Mr.C.Prakasam

For Respondents : Mr.P.Jagadeesan for R1 to R4

ORDER

Challenging the impugned order passed in I.A.No.580 of 2018 in O.S.No. 42 of 2017, on the file of learned II Addl. District Judge, Salem, the plaintiff preferred this Civil Revision Petition.

2. Originally, a Suit in O.S.No. 42 of 2017 was filed by the revision petitioner/plaintiff herein for the relief of specific performance directing the defendants to execute the sale by receiving balance consideration. For that, he filed a sale agreement dated 16.12.2007 with the endorsement with regard to the subsequent payment. The defendants filed their written statement and denied not only the execution of sale agreement, but also the alleged endorsement made on the back side of sale agreement. However, issues were framed and at the time of examination of P.W.1, the defendants filed an application in I.A.No.580 of 2018 under Sec. 45 of Indian Evidence



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Act and under Sec.151 of C.P.C. to send Ex.A1 sale agreement with the signature found in the endorsement Ex.A9. The said application was strongly opposed by the plaintiff stating that after beginning the trial, the defendants filed the said application, which shows that to drag on the proceedings, they filed the said application. Furthermore, no document is adduced for comparison of signature. Considering submissions of both sides, the learned trial judge held that by sending document for expert opinion would not cause hardship to the plaintiff and accordingly, allowed the application. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner argues that the trial court failed to take note of the fact that after examination of P.W.1, to fill up the lacuna, the defendants come forward with the said application, which itself shows that to drag on the proceedings, it was filed. But, the same was not properly appreciated by the trial judge.



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4. By way of reply, the learned counsel for respondents submitted that they denied the alleged execution of sale agreement by filing written statement and also the alleged endorsement made on the back side of sale agreement was not signed by the 1st defendant N.Chinnusamy and it was signed by various persons. On bare perusal of records reveals, in order to prove their defence, the defendants filed the said application and the same was rightly appreciated by the trial judge.

5. Heard and considered rival submissions of both learned counsel for petitioner and respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it would reveal that a suit for specific performance was filed by the plaintiff in the year of 2017 and the defendants also filed their written statement denying the execution of sale agreement as well as the alleged endorsement made on the back side of the agreement. Now, they have filed an application to send the signature of 1st defendant Chinnusamy found in Ex.A1 and to compare the signature found in Ex.A9. But, no contemporary



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document was adduced to compare the signature of 1st defendant. However, the learned counsel for respondents argued that the signature of Chinnusamy in Ex.A1 as well as the endorsement in Ex.A9 are signed by different persons and the signature itself proves that the said document is false and fabricated one. But, on seeing the facts, it is necessary that the 1st defendant ought to have produced the document of contemporary period from the year of 2008 onwards to compare his signature. Therefore, the findings given by the learned trial judge is accepted and if the opportunity is not given to the plaintiff, his valid right to defend his case would be defeated. Therefore, the findings of the trial judge is liable to be confirmed.

6. In the result, this Civil Revision Petition is dismissed and the findings rendered by the learned trial judge in I.A.No.580 of 2018 is confirmed. However, the trial court is directed to compare the signature found in Ex.A1 with the endorsement found on the back side of the same agreement and also the 1st defendant is directed to produce the signature found in the document relating to contemporary periods of the said agreement in order to compare his original signature with the disputed



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signature and endorsements (Ex.A1 and Ex.A9). Three weeks time is granted to the respondents for production of document. Thereafter, the trial court is directed to send the document as per manner known to law and after receipt of report, thereafter the trial court is proceed with the trial and dispose the case within a period of 6 months. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

II Addl. District Judge,
Salem.



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T.V.THAMILSELVI, J.

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