



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2022

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No.1023 of 2017

and

C.M.P.No.4944 of 2017

1.M.P.Nagarajan
2.M.S.P.Mohanaselvam
3.Gunasekaran
4.Kulandaivelu
5.M.Ramalingam
6.P.N.Muthusamy
7.P.Loganathan
8.M.Ramalingam

...Petitioners / Petitioners /Defendants 5 to 12

Vs.

1.G.Kandasamy
2.V.Krishnan

...Respondents/Respondents/Plaintiffs

Prayer:- This petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 13.02.2017 in I.A.No.13 of 2017 in O.S.No.8 of 2007 on the file of the Additional District Judge, Erode District at Bhavani.

For Petitioners : Mr.L.Monish
For N.Manoharan

For Respondents : Mr.T.Murugamanickam,
Senior Counsel
For Ms.Zeenath Begam



ORDER

WEB COPY This Civil Revision Petition has been filed questioning the order of the learned Additional District Judge, Erode dated 13.02.2017 in I.A.No.13 of 2017 in O.S.No.8 of 2007 filed by the petitioners / defendants 5 to 12.

2. The respondents in the revision petition are the two plaintiffs. The other defendants 1 to 4 who are quite crucial to decide the issue in the suit are not parties in the revision petition.

3. The suit in O.S.No.8 of 2007 had been filed by the two respondents herein namely, G.Kandasamy and V.Krishnan, seeking specific performance of an agreement, which was entered into by the 1st and 2nd defendants / B.A.Sellappan and Laxmi on 16.11.1994 with respect to properties, namely vacant land measuring 7.82 acres out of a larger extent of 15.64 acres in RS.Nos.55/7, 54/5, 6 and 53/1 and 53/4 at Urachikottai Village, Bhavani, Erode District. The suit was originally filed against four defendants, B.A.Sellappan and Laxmi who are spouses and their sons, the 3rd and 4th defendants namely, C.Selvan and C.Rameshkumar @ Ramu. The suit had proceeded in its normal course.

4. The written statement had been filed by D1 and it was adopted by



D2. There was no serious objection raised about the agreement as such.

Subsequently, the learned counsel for the petitioner pointed out that disputes arose between D1 and D2 and owing to that strain in the relationship, D2 set about an independent path and filed an additional written statement claiming that her signature was forged in the agreement and that she had not put her signature in the agreement of sale. This necessitated forwarding her signature for an opinion to be given by a handwriting expert and I am informed that it was done and the opinion of the handwriting expert is available in the Court records.

5. In the meanwhile, D3 and D4 / sons started dealing with the property and they originally sold the property to D5 and D8 who in turn, for good measure, sold the property to D9 to D12. Naturally, this has given rise to much confusion over the agreement itself and the plaintiffs are deeply aggrieved by all these transactions. The plaint had also been amended bring into the picture, the subsequent purchasers / D5 to D12.

6. Thereafter, IA.No.13 of 2017 came to be filed by D5 to D12, who can be termed as subsequent purchasers. They had filed an application under Order XVI Rule 1 CPC, seeking to mark as a document, the opinion of the handwriting expert, which according to them was



already available in the Court records.

WEB COPY

7. It must be kept in mind that the opinion was regarding the signature of D2 and not about D5 to D8 directly or even indirectly. That application came to be dismissed by order dated 13.2.2017 and aggrieved by the said order of dismissal, the said defendants / D5 to D12 have filed the present revision petition.

8. Heard arguments advanced by Mr.L.Monish, learned counsel for Mr.N.Manoharan, learned counsel for the petitioners and Mr.T.Murugamanickam, learned Senior Counsel for Ms.Zeenath Begam, learned counsel for the respondents / plaintiffs.

9. The learned counsel for the petitioners stated that Order XVI Rule 1 CPC gives a small window for the petitioners to give the list of witnesses and call upon the Court to issue summons to the witnesses. It is the claim of the learned counsel that the opinion of the handwriting expert is already available in the Court records and therefore, it will be much assistance to the Court, if it is also taken on record and considered while examining the veracity of the agreement. Learned counsel pointed out that the learned Trial Judge had erred in holding that the petitioners herein are



WEB COM

the third party strangers to the agreement and therefore, they cannot speak about the agreement or the facts surrounding the agreement. Learned counsel also assailed the reasoning given, that the opinion of a handwriting expert is not substantive and therefore, the agreement will have to be independently examined by the Court and its proof will have to be established by evidence let in by the plaintiffs.

10. Mr.T.Murugamanickam, learned Senior Counsel, on the other hand stressed on the very basic fact that the petitioners herein are strangers to the agreement. They can therefore, never come forward to state anything about either the genuinity of the agreement or about the surrounding circumstances of the agreement. They are subsequent purchasers and therefore, their status and locus itself is questionable. They are subsequent purchasers of the subject property, which is the subject matter of specific performance to be performed by D1 and D2 and when that is the nature of the suit, they would be bound by any decree which is passed in the suit. They knew that they had purchased the property when the suit was pending and that they would therefore be bound by any order passed.

11. It is the contention of the learned Senior Counsel that the burden



WEB COPY

to establish the agreement is heavily on the plaintiffs and trial in manner known to law is the only answer to substantiate the agreement. It is also contended that the agreement had been admitted by D1 and D2 and it was only the subsequent endorsements which are disputed by D2 and the proof of those endorsements, would be the burden to be established by the plaintiffs / respondents herein.

12. I have carefully considered the arguments advanced.

13. The suit is for specific performance. Primarily, the agreement will have to be established as being genuine, as being admissible and having been entered into between the parties with consensus ad idieum. These are all facts which have to be established. The only witness who can speak and establish these facts are the parties to the agreement. If there are any witness to the agreement, they can be also explained additionally to prove that the agreement was actually signed by the parties. But they may not be able to explain the contents or speak about the agreement as such.

14. The parties to the agreement are D1 and D2 on the one hand and the respondents/plaintiffs on the other hand. The burden is on the plaintiffs to establish that the agreement which they seek specific



WEB.COM

performance had been entered into with an open mind, with understanding what were the conditions and with full consent by D1 and D2. That is a burden to be discharged by the respondents / plaintiffs during the course of trial. Thereafter, if the agreement is said to be established or proved and if subsequent endorsements in the agreement are also established in manner known to law during the course of trial, then still they would also have to establish readiness and willingness to pay the balance consideration and obtain a sale deed as contemplated in the agreement.

15. These are all matters of trial. I would leave it to the wisdom of the learned Trial Judge to examine all these issues. The role of the present petitioners as subsequent purchasers would be to ensure that judgment is passed only when the agreement is proved.

16. Opinion of the handwriting expert under Section 45 of the Indian Evidence Act, as the provision itself says, is only an opinion. It is not a substantive piece of evidence. Any opinion of a handwriting expert will have to be independently corroborated by other evidence of the parties themselves.

17. It is for the D1 and D2 to come forward with such evidence. D2 may choose to do lead evidence or she may not choose to do so. The Court



WEB COURT

will have to give a judgment on the evidence available. The Court can issue notice to parties to participate in the trial process and to lead evidence. The opinion of the handwriting expert being already available in the Court records, I would leave it again to the wisdom of the learned Trial Judge to consider it as a necessary evidence or not. That question will arise only during the course of trial and even before commencement of trial, it cannot be insisted that a particular piece of evidence should be definitely looked into by the learned Trial Judge.

18. I am confident that the learned Trial Judge would examine, if the situation warrants and the liberty is always with every judge, to examine all the records which are already available in the Court records. All the issues in this case are the matter of trial. Let me leave it to the Trial Court to proceed further with the trial. If the trial has been already commenced let it proceed further. I hope that parties would co-operate during the course of trial to enable the learned Trial Judge to render a finding on the issues raised.

19. I also find from the records that the learned Senior Counsel for the respondents had forwarded a judgment of the Hon'ble Supreme Court in **(1997) 5 SCC 476, Dhanna Singh and others and Baljinder Kaur and**



others. In the case quoted above, the issue was with respect to the right of the subsequent purchaser to lead evidence. A suit had been filed by the plaintiffs for permanent injunction restraining the defendants from alienating any portion of the property. However, the property was alienated in favour of the appellants before the Hon'ble Supreme Court. Originally, the defendants were granted an opportunity to lead evidence. They did not come forward to lead evidence. The evidence was therefore closed. After that the subsequent purchasers had filed an application to lead evidence. That application was rejected. The reasoning of the Hon'ble Supreme Court was as follows:

“4.Pending the suit, though several opportunities were given, no evidence was adduced by the defendant. The Court passed an order on 29.09.1995 foreclosing the evidence of the defendant on the statement of the counsel that the first defendant was not willing to lead any evidence. An application for impleadment was filed earlier by the appellant who is a subsequent purchaser from the first defendant. After impleadment, he filed application for adduction of evidence which was rejected. Thus this appeal.

5.The undisputed fact is that in the plaint the plaintiff respondent had already sought for a relief



of injunction of alienation, yet the alienation came to be made. Apart from the doctrine of lis pendens under Section 52 of the T.P. Act, the subsequent purchaser does not get any right to lead to any evidence, as he stepped into the shoes of the first defendant, who had given up the right to lead evidence. In view of these circumstances, he does not get any right to lead any evidence.”

20. It had been very specifically stated that the subsequent purchaser does not get any right to lead evidence as he has stepped into the shoes of the defendants who had given up the right to lead evidence. The judgment applies to the facts of this case and with due respect, I would follow the dictum laid down by the Hon'ble Supreme Court.

21. With the above observations, the present Civil Revision Petition is dismissed, with a direction to the learned Trial Judge / Additional District Judge, Bhavani, to dispose of the suit after following due procedure or before 30.06.2022. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.02.2022

smv



Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

To,
The Additional District Court, Bhavani.

C.V.KARTHIKEYAN, J.,

smv

C.R.P.(PD) No.1023 of 2017

and

C.M.P.No.4944 of 2017



WEB COPY



11.02.2022