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CRP.No.4141 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4141 of 2017

and

CMP.No.19412 of 2017

1. D.R. Mohan
2. R. Kalaiselvam,

.. Petitioners

Versus

1. M. Saroja,
2. R. Subha
...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 25.07.2017 made in I.A.No.393 of 2017 in O.S.No.110 of 2016 on the file of Sub-Ordinate Court at Sathiyamangalam.

For Petitioners : Mrs. Veena Suresh

For Respondents : No Appearance



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ORDER

This Civil Revision Petition has been filed by the petitioners seeking to set aside the fair and decretal order dated 25.07.2017 made in I.A.No.393 of 2017 in O.S.No.110 of 2016 on the file of Sub-Ordinate Court at Sathiyamangalam.

2. The petitioners are the plaintiffs and the respondents are the defendants in the original suit.

3. The case of the petitioners is that the petitioners/plaintiffs filed a suit in O.S.No.110 of 2016 before the Sub-Ordinate Judge at Sathiyamangalam, seeking for a relief of declaration that the (i) deed of power of attorney dated 17.04.2013 is an irrevocable deed of power of attorney, (ii) the deed of cancellation of the General power of attorney executed 20.06.2014 and registered as Document No.2918 of 2014 in Book-I in the office of the Sub-Registrar, Punjai Puliampatti is null and void and non est in law, consequently, restraining the 1st defendant by means of permanent injunction from interfering with the plaintiffs



possession of the properties described in Schedule C of the suit and selling or dealing with the same. During the pendency of the suit, the petitioners have filed I.A No.393 of 2017 under Order 26 Rule 10-B and Section 151 of C.P.C. seeking to appoint an advocate commissioner so as to compare the signature/thumb impression of the 1st defendant in the receipt dated 17.04.2013 with the original registered deed of power of attorney dated 17.04.2013 to prove their claim over the property. The Trial Judge after considering the oral and documentary evidence dismissed the same by order dated 25.07.2017 holding that while the document of Power of Attorney dated 17.04.2013 was not produced before the Trail Court, the comparison of thumb impression with the receipt dated 17.04.2013 could not be admitted. Being aggrieved by the aforesaid dismissal order, the petitioners/plaintiffs have filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioners would submit that the learned Sub-ordinate Judge failed to see that the original was filed before the Court below and the same was very much available in the Court records. However, without considering the aforesaid facts, the Trial Court has



erroneously dismissed the application stating that the Original Power of Attorney executed by the 1st defendant/1st respondent herein was not produced before it in the event of comparison of signature and thumb impression of the 1st defendant/1st respondent herein with the original receipt dated 17.04.2013. Hence, the reasons assigned by the Sub-ordinate Judge is not sustainable and liable to be dismissed. Further, as per the direction of this Court by order dated 27.09.2022, the necessary documents, ie. (i) Power of Attorney dated 17.04.2013 in Document No.2470/2013, (ii) Receipt dated 17.04.2013 and (iii) Sale Agreement dated 17.04.2013, have been produced before this Court in support of his arguments. Hence, he seeks to set aside the order dated 25.07.2017 made in I.A. No.393 of 2017 in O.S. No.110 of 2016 on the file of the Subordinate Court, Sathiyamangalam.

5. Heard the learned counsel for the petitioners and perused the materials available on record. There is no representation for the respondents.

7. This Court by its order dated 27.09.2022 directed the



plaintiffs/petitioners herein to submit the certified copy of the necessary documents, ie. (i) Power of Attorney dated 17.04.2013 in Document No.2470/2013, (ii) Receipt dated 17.04.2013 and (iii) Sale Agreement dated 17.04.2013 since they have been said to have submitted before the Trial Court. Accordingly, the learned counsel for the petitioners has submitted the same.

8. On a perusal of the records, it is seen that the petitioners have produced the copy of the receipt dated 17.04.2013 signed by the 1st defendant/1st respondent herein. However, in the Written statement filed by the 1st respondent, it has been denied.

8. Under such circumstances, having considered the facts and circumstances of the case, this Court is inclined to allow the present Civil Revision Petition by setting aside the order dated 25.07.2017 made in I.A. No.393 of 2017 in O.S. No.110 of 2016 passed by the Trial Court and the Trial Court is hereby directed to appoint an Advocate Commissioner to take the Original Power of Attorney dated 17.04.2013 and the Original Receipt dated 17.04.2013 for comparison of signature and thumb impression to



obtain expert opinion in the manner known to law enabling the Trial Court to decide the matter on merit. Further, the Trial Court is hereby directed to get the signature along with thumb impression of the 1st defendant/1st respondent herein in the proceedings of the Court below for comparison of the signature and thumb impression of the 1st defendant/1st respondent herein and dispose of the Original Suit in O.S. No.110 of 2016 within a period of eight months after receipt of the Report of the Advocate Commissioner.

9. In the result, the Revision Petition is allowed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

14.11.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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To

1. The Sub-Ordinate Judge's Court, Sathiyamangalam.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

Lbm

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