



CRP(PD)(MD)No.29 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 08.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.29 of 2021
and C.M.P.(MD)No.359 of 2021

1. Sudalai
2. Muppidathi
3. Velmurugan

... Revision Petitioners

versus

Balasubramanian

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.08.2020 passed in I.A.No.1 of 2019 in O.S.No.47 of 2014 by the Additional District Munsif, Ambasamuthram.

For Revision Petitioners : Mr.A.Balakrishnan
For Respondent : Mr.N.Dilip Kumar

ORDER

This Civil Revision Petition is filed against the order dated 13.08.2020 passed by the learned Additional District Munsif,



CRP(PD)(MD)No.29 of 2021

Ambasamuthram, in I.A.No.1 of 2019 in O.S.No.47 of 2014.

WEB COPY

2. The revision petitioners are defendants in O.S.No.47 of 2014.

The respondent/plaintiff has filed the above suit for bare injunction, claiming that he is the owner of the property, pursuant to the sale deed dated 08.08.1990. The defendants have taken a plea that the sale deed executed in the year 1990 is not correct, since one of the executant, namely, Samy Nadar, who is the grandfather of the defendants, died in the year 1988. A copy of the death certificate has also been produced to that effect. The defendants have also filed an application in I.A.No.1 of 2019 in O.S.No.47 of 2014 to send the documents to the Forensic Laboratory for comparing the thumb impression of Samy Nadar found in the mortgage deed dated 31.05.1973 with the thumb impression found in Ex.A1-Sale deed dated 08.08.1990. The learned trial Judge, by order dated 13.08.2020, dismissed the application on the ground that the defendants have not taken any plea for comparing the signature found in Ex.A1 and taken this plea only for comparing the thump



CRP(PD)(MD)No.29 of 2021

impression found in Ex.A1 and they have not produced any contemporaneous document for comparing the thumb impression.

Aggrieved over the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the defendants/revision petitioners submits that since there is no contemporaneous document available with the defendants/revision petitioners, they have produced the mortgage deed dated 31.05.1973 and therefore, they have confined the plea with regard to the verification of the thumb impression found in both the documents. By relying upon the death certificate of the revision petitioners' grandfather Samy Nadar, the learned counsel for the revision petitioner submits that the said Samy Nadar was one of the executant of Ex.A1-sale deed dated 08.08.1990 and he died in the year 1988 itself and therefore, it cannot be executed in the year 1990. Hence, the said application has been filed to compare the thumb impression found in Ex.A1-sale deed with the thumb impression found in the mortgage deed dated 31.05.1973. He further submits that both



CRP(PD)(MD)No.29 of 2021

the documents are registered documents and the thumb impression of a person can never be changed and therefore, it can be verified and compared. However, the learned trial Judge, without considering the same, has committed an error in dismissing the said application.

4. The learned counsel for the plaintiff/respondent submits that the defendants/revision petitioners have not disputed the signature of Samy Nadar in Ex.A1-sale deed dated 08.08.1990, however, they have requested for comparing the thumb impression of Samy Nadar in Ex.A1-sale deed with the thumb impression found in the mortgage deed dated 08.08.1990. It is not known as to who has executed the mortgage deed. Therefore, it cannot be used for comparing the thumb impression found in Ex.A1-sale deed dated 08.08.1990. He further submits that Ex.A1-sale deed dated 08.08.1990 is a registered document and it was registered not only by Sami Nadar and also by the father of the defendants/revision petitioners. The revision petitioners, without questioning the signature found in Ex.A1, are not entitled to



CRP(PD)(MD)No.29 of 2021

ask for examining the thumb impression alone. Further, the mortgage deed is not an admitted document. Therefore, the learned trial Judge has rightly rejected the request of the defendants/revision petitioners. With regard to the death certificate, he submits that the death certificate of Samy Nadar has been obtained in the year 2016 and therefore, it cannot be said to be a genuine one.

5. This Court considered the rival submissions made.

6. The plaintiff/respondent herein filed the suit in O.S.No.47 of 2014 for bare injunction, based on the registered sale deed dated 08.08.1990, which is marked as Ex.A1. Ex.A1 was executed by one Samy Nadar and his son, one Senthilvel in favour of the plaintiff/respondent in the year 1990. The defendants claim that Samy Nadar, one of the executant, died in the year 1988 itself. They also produced a death certificate to that effect. Whether the death certificate produced by the defendants is a genuine one or not, can be decided



CRP(PD)(MD)No.29 of 2021

only at the time of trial. The defendants/revision petitioners have also taken a specific plea that they are not having any registered document through which the signature of Samy Nadar can be compared with. The only available document is a mortgage deed executed by Samy Nadar in the year 1973 and it is also a registered and public document.

7. According to the revision petitioners, the thumb impression is varied in both the documents. The available document with the revision petitioners is a mortgage deed, which is a registered and public documents. Since it is a public document, the thumb impression found in that document can be compared with the thumb impression found in Ex.A1-sale deed dated 08.08.1990 and no prejudice would be caused in comparing thumb impression found in Ex.A1. Therefore, this Court is inclined to allow this Civil Revision Petition.

8. Accordingly, the Civil Revision Petition is allowed, by setting aside the order dated 13.08.2020 passed by the Additional District



CRP(PD)(MD)No.29 of 2021

Munsif, Ambasamuthram, in I.A.No.1 of 2019 in O.S.No.47 of 2014.

The matter is remitted back to the trial Court to send the documents for comparing the thumb impression of Samy Nadar found in the mortgage deed dated 31.05.1973 with the thumb impression found in Ex.A1-Sale deed dated 08.08.1990 through scientific experts.

9. Since the suit is of the year 2014, the learned trial Judge shall expedite the trial and dispose of the suit in accordance with law, within a period of eight months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

08.07.2022

Index : Yes / No.

Internet : Yes / No.

ogy

To

1. The learned Additional District Munsif,
Ambasamuthram.

7 / 8



WEB COPY



CRP(PD)(MD)No.29 of 2021

B.PUGALENDHI, J.

ogy

CRP(PD)(MD)No.29 of 2021

08.07.2022