



CRP (MD) No. 928 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No. 928 of 2017
and
CMP (MD) No. 4055 of 2017

1.Senthilkumar

2.Sumathi

... Petitioners

Vs

1.P.Mahalakshmi

2.S.Prabhu Kannan

3.K.Nallathambi

... Respondents

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India, to call for the records pertaining to the order of Additional District Munsif Court, Tiruchirappalli made in IA.No.928 of 2016 in OS.No.240 of 2010 dated 18.02.2017 and set aside the same and allow this civil revision petition.

For Petitioner : Mr.T.Vadivelan

For Respondent : Mr.P.Thiyagarajan

Nos.1 and 2

For Respondent : No representation

No.3



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ORDER

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This Civil Revision Petition is filed as against the order of the I Additional District Munsif Court, Tiruchirappalli made in IA.No.928 of 2016 in OS.No.240 of 2010 dated 18.02.2017.

2.The petitioners/ plaintiffs have filed a suit in OS.No.240 of 2010 before the I Additional District Munsif, Tiruchirappalli for declaration and permanent injunction. The petitioners have also filed an application in IA.No.928 of 2016 under Section 45 of the Indian Evidence Act, to refer the document Ex.B4 receipt for comparing the signature found in Ex.B4 with the admitted signature of the first plaintiff. The said application was contested by the respondents/ defendants that the plaintiffs have admitted the receipt of money of Rs.42,000/-, as stated in Ex.B4 and they have admitted the case of the plaintiffs and therefore, the document Ex.B4 need not be referred for comparison at the argument stage of the suit. The trial Court holding that the defendant did not prove document Ex.B4 sufficiently by examining the attestor and



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therefore, there is no necessity for comparing the signature of the first plaintiff found in Ex.B4, dismissed the application. Aggrieved over the same, the present civil revision petition is filed.

3.The learned Counsel for the petitioners submits that the petitioners mortgaged their property with the first respondent for a sum of Rupees three lakh and he also redeemed the same. The respondents have created a forged power deed in favour of the second respondent, as if, the plaintiffs executed power in favour of the second respondent on 07.03.2017. Knowing about the forged power deed, he cancelled the power deed on 23.06.2008 and also executed a settlement deed in favour of the wife / the second petitioner herein. Despite the same, the first respondent with the said power deed, which was cancelled on 23.06.2008 created a sale deed in favour of the third respondent on 23.06.2009 and therefore, the plaintiffs filed the above suit for declaration to declare document No.9202 of 2008, dated 09.09.2008 and document No.1645 of 2009 dated 26.03.2009 as null and void.



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4. During the defendants side evidence, the second respondent produced payment of receipt and the same was also marked as Ex.B4. Despite their strong objection the document Ex.B4 was marked by the trial Court. The petitioners/ plaintiffs disputed the validity of the said payment receipt, during the cross examination and has also taken a plea that it has not been pleaded in the written statement, but now they have filed this application to compare the signature of the first plaintiff found in Ex.B4, but the same was dismissed by the trial Court as if the petitioners/ plaintiffs have accepted Ex.B4 and the burden is also on the defendants and when it is their onus there is no necessity for this petition.

5. As per Section 102 of the Indian Evidence Act, the petitioners are liable to prove the validity of the said document as onus of proof is shifted to them and if the signature is not compared, their case would be affected. He also relied on the decision of this Court in **Bama Vs Rukiyal Bivi** reported in **2004 (1) CTC 109**, wherein this Court has held as follows:



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"12. Under Section 102 of the Indian Evidence Act, the burden of proof rests on the party, who would fail, if no evidence at all were given on either side.

13. In a case where the execution of document is admitted, a presumption was raised in favour of the plaintiff that the said document was made for consideration and the presumption was raised, it had the effect of shifting the burden on to the defendant, to establish that there was no consideration."

6. The learned Counsel for the respondents submits that the suit was posted for arguments and at that stage, the petitioners/ plaintiffs have filed this application only with an intention to drag on the suit proceedings further. The petitioners/ plaintiffs in his cross examination have admitted the documents Ex.B4. While so, there is no necessity for comparing the signature of the first plaintiff found in document Ex.B4. He further submits that the receipt of the said amount has been stated in the written statement itself. Therefore, there is no reason to interfere with the orders of the trial Court.



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7. This Court considered rival submissions and perused the materials placed documents.

8. The petitioners have filed the suit for declaration and permanent injunction. The respondents / defendants during their evidence have produced this document Ex.B4 as receipt for payment that the petitioners/ plaintiffs have received the additional sum of Rs.42,000/- for additional sale consideration apart from the mortgage amount and have also issued the receipt on 07.02.2007. The petitioners / plaintiffs claim that they have stated about this receipt in the written statement itself. However, the date of receipt and the amount of Rs. 42,000/- are not mentioned in the written statement. It is the case of the plaintiffs that they have only mortgaged the property in favour of the first defendant and fraudulent power deed has been created as if the power was given to first respondent and therefore, it was cancelled. Even after the cancellation of the document, sale deed has been created. Hence the above suit was filed for declaration to declare the documents dated 09.09.2008 and 23.06.2009 as null and void.



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9. This revision petition is filed since the petitioners / plaintiffs have disputed Ex.B4 and the same has also been marked. This Court is of the view that the an opportunity must be provided to the petitioners / plaintiffs to compare the signature found in document Ex.B4. Therefore, the order of the trial Court in IA.No.928 of 2016 in OS.No.240 of 2010 dated 18.02.2017 is set aside. The trial Court shall send the document Ex.B4 to the Forensic Lab for examining the signature found in Ex.B4 forthwith. Considering the grievances of the respondents that the suit is at the stage of arguments and this application is filed to drag on the proceedings, the trial Court shall endeavour to conclude the trial as expeditiously as possible within a period of two months from the date of receipt of a copy of the the report from the forensic lab.

10. With the above direction, the civil revision petition is allowed. No costs. Consequently connected miscellaneous petition stands closed.

07.11.2022

dsk

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To

The I Additional District Munsif,
Tiruchirappalli.



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B. PUGALENDHI, J.

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