



.CRP.Nos.458 & 459 of 2021.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 13.03.2023

Delivered On: .04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.Nos.458 & 459 of 2021

and

CMP.Nos.3999 & 4000 of 2021

Sundarambal ... Petitioner/Petitioner/Plaintiff in both CRPs

Vs.

1. Kolanji

2. Manivel ... Respondents/Respondents/Defendants
in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the fair and decreetal Order dated 22.01.2020 made in I.A.Nos.2 & 3/2019 in O.S.No.407/2012 on the file of the learned District Munsif, Jayamkondam.

For Petitioner
in both CRPs : Mr.M.Senthil Vadivu

For Respondents
in both CRPs : Mr.T.Gopinath for R-1



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.CRP.Nos.458 & 459 of 2021.

No Appearance - R-2



.CRP.Nos.458 & 459 of 2021.

COMMON ORDER

These Civil Revision Petitions have been filed to set aside the fair and decreetal Order passed by the learned District Munsif, Jayamkondam in I.A.Nos.2 & 3/2019 in O.S.No.407/2012, dated 22.01.2020.

2. The Petition filed under Rule 75 of Civil Procedure Code by the Plaintiff seeking to summon the Sub Registrar, Aandimadam along with relevant documents and registers with regard to Document No.2414/2011 dated 18.11.2011. The contention of the Plaintiff in the Suit in O.S.No.407/2012 that the Defendant in the Suit/D-1, who is her estranged husband, had used some other person as an impersonator and had executed the settlement deed as though the Plaintiff Sundarambal herself had executed settlement deed dated 18.11.2011 in favour of her husband.

2.1. It is the contention of the Plaintiff that the Plaintiff and her Husband/D-1 have been separated for more than 10 years and the estranged husband had impersonated her as though the Plaintiff had executed settlement deed in favour of her husband/D-1 on 18.11.2011. Therefore, to



.CRP.Nos.458 & 459 of 2021.

prove her contention, the Sub Registrar, Aandimadam along with all relevant documents and Registers including photograph affixed on the Registers for Registration of the Document No.2414/2011 has to be summoned before the Court under Rule 75 of Civil Procedure Code. The Defendant in the Suit as Respondent in I.A.No.02/2019 had resisted the same on the ground that the sale deed in favour of the Plaintiff was dated 18.10.2007. The settlement deed alleged to have been executed by the Plaintiff is dated 18.11.2011 and therefore, she filed a Petition in I.A.No.03/2019 under Section 45 of Indian Evidence Act for comparison of the signatures on the sale deed and the settlement deed. The signature on the sale deed in her favour dated 18.10.2007 and the signature in the settlement deed is dated 18.11.2011. The duration between the sale deed and the settlement deed is four years. Therefore, it cannot be compared and opinion cannot be given. On that ground, the learned District Munsif, Jayamkondam had dismissed the Petitions in I.A.Nos.2 & 3/2019 by Order dated 22.01.2020. Aggrieved by the same, the Plaintiff had approached this Court.



.CRP.Nos.458 & 459 of 2021.

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3. The learned Counsel appearing for the Revision Petitioner submitted that the Revision Petition had been filed against the dismissal of I.A.No.3/2019 in O.S.No.407/2012 on the file of the learned District Munsif, Jayamkondam. It was filed seeking comparison of signature and to obtain opinion of the forensic expert regarding the signature found in the settlement deed alleged to have been executed in favour of the Respondent, who is the Defendant in the Suit. The said Petition was filed after closing of evidence of the Plaintiff as well as the Defendants.

3.1. The learned District Munsif, in his Order in I.A.No.3/2019 in O.S.No.407/2012 had dismissed the Petition, stating that it is a belated Petition. The said Petition seeks to compare the signatures, which is four years old and therefore, no purpose will be served by sending the document for comparison.

3.2. It is the further contention of the learned Counsel for the



.CRP.Nos.458 & 459 of 2021.

Petitioner herein that actually the Petition should have been filed by the Respondent but the Respondent did not choose to send it for forensic examination. Therefore, it was the duty of the Plaintiff as Petitioner in I.A.No.3/2019 seeking expert opinion and the same was refused as belated. It is the further contention of the learned Counsel for the Petitioner that the Petition of this nature can be filed at any stage of the proceedings even at the stage of Appeal. Therefore, the learned Counsel for the Petitioner seeks to set aside the Order of dismissal in I.A.No.3/2019 in O.S.No.407/2012 before the learned District Munsif, Jayamkondam, dated 22.01.2020.

4. The learned Counsel for the Respondents submitted that the photostat copy of the settlement deed and sale deed are already available before the learned District Munsif, Jayamkondam. There was a family dispute between the Plaintiff/Wife and the first Defendant/Husband. Therefore, they have been residing separately. Four years prior to the Suit, they were separated. Seven years after the filing of the Suit, this Petition had been filed.



.CRP.Nos.458 & 459 of 2021.

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4.1. It is the contention of the learned Counsel for the Respondents, who are the Respondents before the trial Court, that after the High Court had issued a direction to dispose of the case within a specified time, the Suit had been included in the Special List. Evidence for the Plaintiff and the Defendant had already been recorded and the evidence was closed. When the Suit is posted for arguments, the Plaintiff had filed this case only to protract the proceedings. The Plaintiff is aware of her case. The learned District Munsif, Jayamkondam had dismissed the Petition observing that it is a belated petition as the signature cannot be compared in this length of time (4 years). Therefore, the learned District Munsif had rightly dismissed the Petition observing that in the absence of the original documents before the Court by the party concerned. After the conclusion of the trial, the Court can draw adverse inference against the party concerned in the course of the judgment. Therefore, the dismissal order passed by the learned District Munsif does not warrant any interference by this Court under Article 227 of Constitution of India.

5. Point for Consideration:

7/15



.CRP.Nos.458 & 459 of 2021.

Whether the Orders passed by the learned District

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Munsif, Jayamkondam in I.A.Nos.2 & 3/2019 in

O.S.No.407/2012 dated 22.01.2020 are to be set aside?



.CRP.Nos.458 & 459 of 2021.

6. The contention of the learned Counsel for the Respondents in I.A.No.2 & 3/2019 in O.S.No.407/2012 and the learned Counsel for the Respondents in this Petition that after the direction from the High Court to the learned District Munsif to dispose of the Suit, the Suit had been included in the Special List and had proceeded till the stage of arguments. At that stage, this Petition is filed only to protract the proceedings cannot be accepted. Before the conclusion of the trial, the Parties may resort to seek Expert's opinion regarding their contention to prove or disprove the signature through the Experts in the Forensic Department. That cannot be rejected on the ground that the Suit had reached the stage of argument. Not only that, the other points raised in this case that the signature in the sale deed is of the year 2007 that cannot be compared with the signature in the settlement deed which is of the year 2011. It is for the experts to say and not for the layman. Also, it is to be noted that when the Plaintiff disputed the signature on the settlement deed and admits the signature on the sale deed in the year 2007. The Plaintiff as Petitioner in I.A.No.2/2021 and I.A.No.3/2019 is duty bound to produce the documents containing her admitted signatures for the relevant period from 2007 to 2011 to enable the



.CRP.Nos.458 & 459 of 2021.

Forensic Handwriting Expert/Fingerprint Expert to compare the signatures as well as fingerprints concerned it may be changed due to the aging process and the impression in the hands may also be changed. Therefore, for comparison of signatures, the Petitioner shall furnish the documents for the relevant period from 2007 till 2011. Even otherwise, if the Experts from the Forensic Department admitted the signatures from the Petitioner, the Petitioner shall furnish the admitted signatures in the open Court to be obtained by the learned District Munsif from the Petitioner/Plaintiff. So that the signatures of each and every characteristics of letters can be compared with Petitioner's previous signatures and opinion can be given on the basis of the signature of the very same individual over the period of years.

6.1. After exhausting the chances that are available to the Plaintiff to prove her contention that the settlement deed was executed fraudulently, then the Court can proceed with hearing the arguments and dispose of the case. The chance of the Petitioner/Plaintiff to prove her contention stating that the High Court issued direction to the learned District Munsif to



.CRP.Nos.458 & 459 of 2021.

dispose of the Suit in O.S.No.407/2012 within a specified time and when the trial had reached the final stage/argument stage, the attempt of the Plaintiff in filing the Petition of this nature under Section 75 of Civil Procedure Code to summon the documents regarding the claim of impersonation and for sending the original documents to the Forensic Department to obtain Expert's opinion regarding the signature found on the settlement deed, to prove her contention, cannot be scuttled in the light of the direction to the learned District Munsif to dispose of the case within a specified time.

6.2. Therefore, the submission of the learned Counsel for the Respondent stating that the Civil Revision Petition does not have any merit and is to be dismissed cannot be accepted. The submission of the learned Counsel for the Respondents before the trial Court and before this Court, is rejected. In the light of the principles of fairness, equity and good conscience, the Petitioner/Plaintiff has to be granted an opportunity to prove her case. The expenses for the same shall be met by her. Till such time, the Court can wait.



.CRP.Nos.458 & 459 of 2021.

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6.3. In the light of the above discussion, the Point for Consideration is answered in favour of the Petitioner/Plaintiff and against Respondents/Defendants. The Orders passed by the learned District Munsif, Jayamkondam in I.A.No.2 & 3/2019 in O.S.No.407/2012 are to be set aside.

In the result, these ***Civil Revision Petitions are allowed.*** The Orders passed by the learned District Munsif, Jayamkondam in I.A.No.2 & 3/2019 in O.S.No.407/2012 are set aside. Consequently, connected Miscellaneous Petitions are closed. No costs.

28.04.2023

dh

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order

To

1. The District Munsif,

12/15



.CRP.Nos.458 & 459 of 2021.

Jayamkondam.

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2. Section Officer,
V.R.Section,
High Court, Madras.



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.CRP.Nos.458 & 459 of 2021.

SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
CRP.Nos.458 & 459 of 2021



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.CRP.Nos.458 & 459 of 2021.

28.04.2023