



CRP.No.1872 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1872 of 2019
and CMP.No.12322 of 2019

1.T.P.Kandasamy
2.L.Saroja
3.K.Gopal
4.K.Thangavel
5.K.Jayalakshmi
(5th petitioner brought on record as L.R. of the
deceased first petitioner by order dated 20.01.2023
in CMP.No.377 of 2023 in CRP.No.1872 of 2019)

... petitioners

Vs.

1.P.Sivasubramaniam
2.M.Hema

... Respondents

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to
set aside the fair and decretal order dated 26.02.2019 made in IA.No.473 of 2018
in OS.No.481 of 2017 on the file of the III Additional District and Sessions Judge,
Coimbatore.

For Petitioners : Mr.M.Guruprasad

For Respondents

For R1 : Mr.V.Ayyapparaj
for Mr.R.Bharath Kumar



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ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 26.02.2019 made in IA.No.473 of 2018 in OS.No.481 of 2017 on the file of the III Additional District and Sessions Judge, Coimbatore, thereby dismissed the petition filed to get expert opinion.

2. Heard, the learned counsel for the petitioners and the learned counsel for the first respondent.

3. Petitioners 1 to 4 are defendants 1 to 4 in the suit filed by the first respondent. The first respondent filed suit for specific performance on the strength of the agreement for sale dated 17.08.2012. Petitioners 1 to 4 resisted the same and also denied the very execution of agreement for sale dated 17.08.2012. According to the first respondent, the first petitioner was the owner of the property and he entered into an agreement for sale with the first respondent on 17.08.2012 agreeing to sell the suit property for a total sale consideration of Rs.20,88,843/- and received a sum of Rs.9,00,000/- as advance on the date of execution of sale agreement. Subsequently on 04.10.2013, separate agreement for extension of time was executed. On that day also, further sum of Rs.3,00,000/- was also received by the first petitioner herein. Subsequently, another sum of Rs.3,00,000/- was also paid to



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the first petitioner herein and accordingly an endorsement was made in the back side of the extension deed on 17.06.2014. However, the first petitioner denied the very execution of agreement for sale and also extension deed dated 04.10.2013 and also the endorsements made thereon. However, the first respondent did not take any steps to compare the signatures. Therefore, petitioners 1 to 4 had filed petition for handwriting expert opinion by comparing with the registered partition deed dated 14.08.2013. It was dismissed on the ground that the first respondent denied the signatures found in the partition deed dated 14.08.2013 since it was subsequent to the agreement for sale dated 17.08.2012. Therefore, the possibility of fraudulently affixing a different signature in the partition deed cannot be ruled out.

4. Though the partition deed is a self served document, the first petitioner is not only the party to the suit and other parties are also there. That apart, the partition deed was registered one. Therefore, absolutely there is no prejudice to be caused to the first respondent when the signature found in the partition deed is compared with the agreement for sale. In view of the same, this Court finds infirmity in the order passed by the court below and it is liable to be set aside.

5. Accordingly, the fair and decretal order dated 26.02.2019 made in IA.No.473 of 2018 in OS.No.481 of 2017 on the file of the III Additional District



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and Sessions Judge, Coimbatore is set aside and this civil revision petition is allowed. The court below is directed to send for the agreement for sale dated 17.08.2012, extension deed dated 04.10.2013 and endorsements dated 16.07.2013 and 17.06.2014 to get expert opinion comparing with the partition deed dated 14.08.2013 by appointing an advocate commissioner. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

20.01.2023

Speaking/non-speaking
Index : Yes/No
Internet : Yes
lok

(2/2)



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G.K.ILANTHIRAIYAN, J.

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To
The III Additional District and Sessions Judge,
Coimbatore.

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20.01.2023