



C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

B.Radhakrishnan

... Petitioner

Vs.

R.Karthik

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 24.09.2019 made in I.A. No.01 of 2019 in O.S. No.33 of 2015 on the file of II Additional District and Sessions Court, Vellore District, Vellore @ Ranipet.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.K.Govi Ganesan



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C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

ORDER

The revision petitioner herein is the defendant in a suit for specific performance in O.S. No.33 of 2015 on the file of II Additional District and Sessions Court, Vellore District, Vellore @ Ranipet.

2. The defendant has taken up a set of defences which *inter alia* included that he was forced to sign certain blank papers which were later used by the plaintiff to create the sale agreement in question.

3. The trial of the suit has commenced and the plaintiff has examined PW4, one of the attesting witnesses to the sale agreement, on summons. The defendant would now allege that during the course of the trial, there was a cellphonic conversation between PW4 and him, in which PW4 disclosed certain facts which are likely to create a dent in the case of the plaintiff, and therefore, he took out an application in I.A. No.1 of 2019 to send the voice recorded under Ext.B2 to an expert for comparison of the same with the sample voice of PW4 - Sudhakar Naidu.



C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

4. This application was contested by the plaintiff and the trial court dismissed the application essentially on the ground that the defendant attempted it belatedly.

5. Heard both sides and perused the materials available on record in the form of typed set of papers.

6. Learned counsel reiterated the case as narrated above and submitted that inasmuch as the very cellphonic conversation in question had taken place in the course of trial and since it was denied by PW4 during his cross examination, it becomes necessary for the defendant to prove that the conversation had taken place between PW4 and him.

7. This court finds merit in the submissions of the learned counsel for the plaintiff. After all the trial court is the first court of facts and every fact which are relevant to the facts in issue or relevant to any relevant facts needs to be collected painstakingly by the trial court, and one such relevant fact is the opinion of the expert in the field of their expertise.



C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

8. Therefore, this court chooses to allow the revision petition and sets aside the order order dated 24.09.2019 made in I.A. No.01 of 2019 in O.S. No.33 of 2015 on the file of II Additional District and Sessions Court, Vellore District, Vellore @ Ranipet. Consequently, this court directs the trial court to send the **voice recorded under Ext.B2 to the Director, Computer Forensics Division, Forensic Sciences Department, No.30-A Kamarajar Salai, Mylapore, Chennai - 600004 for comparison of the same with the sample voice of PW4 - Sudhakar Naidu** and file a report before the trial court. No costs. Consequently, the connected civil miscellaneous petition is closed.

21.03.2023

Asr

To

The II Additional Subordinate Judge, Erode.



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C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

N.SESHASAYEE, J.,

Asr

C.R.P. No.3420 of 2019 &
C.M.P. No.22505 of 2019

21.03.2023