



CRP (MD) No.1505 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	25.07.2023
Pronounced on	17.11.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

CRP (MD) No.1505 of 2022
and
CMP (MD).No.6318 of 2022

1.Malarkodi
2.Rajangam

... Petitioners/defendants 1 and 3

Vs.

R.Kavitha

... Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code seeking to call for the records relating to the fair order and decreetal order dated 23.03.2022 passed in I.A.No.205 of 2021 in O.S.No.105 of 2017 on the file of the learned VI Additional District Judge, Madurai and set aside the same.

For Petitioners : Mr.D.Malaichamy

For Respondent : Mr.J.Senthil Kumaraiah



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ORDER

The revision petition is preferred as against the order passed on 23.03.2022 in I.A.No.205 of 2021 in O.S.No.105 of 2017 on the file of the learned VI Additional District Judge, Madurai.

2. According to the revision petitioners, the respondent filed the suit in O.S.No.105 of 2017 before VI Additional District Judge, Madurai, seeking for the relief of specific performance of the agreement for sale dated 17.12.2015 against the revision petitioners. It is submitted that the revision petitioners filed the written statement contending that the respondent/plaintiff is not entitled for specific performance. In the additional written statement filed by the revision petitioners, it is stated that on the date of agreement i.e., on 17.12.2015 the sale consideration of the property was fixed at Rs. 36,00,000/- and a sum of Rs.3,50,000/- was paid as advance. It was further agreed that on or before 16.03.2016 after receiving the balance sale consideration of Rs.32,50,000/- sale deed has to be executed. However, the



respondent/plaintiff, in order to avoid stamp duty and the registration charges, prepared another agreement on the same day for lesser value of Rs.

10,50,000/- and registered the same. However, the 1st respondent/1st plaintiff concealed the unregistered sale agreement dated 20.09.2015 and approached this Court with unclean hands. It is further submitted that when the respondent was examined as P.W.1, she denied that her signature was not affixed in the document dated 17.12.2015 which was agreed for sale consideration of Rs.36,00,000/- and the same was marked as Ex.B.1 on the side of the revision petitioners. It is further submitted that the witnesses who have signed the said document are the relative and husband of the respondent/plaintiff and therefore, they could not support the case of the revision petitioners. Hence, the petitioner filed an application in I.A.No.205 of 2021 for comparison of signature in Ex.B.1 with the admitted signature of the respondent. However, the trial Court erroneously dismissed the above application by its order dated 23.03.2022. Hence, the revision petitioners filed the petition against the order passed in I.A.No.205 of 2021 passed by the trial judge.

3.The learned counsel appearing for the revision petitioner would



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submit that the finding of the trial Court that un-registered document dated 17.12.2015 was not referred in the original written statement but was mentioned in the additional written statement is totally unwarranted at the stage of considering the interlocutory application. He would further submit that finding of the trial Court that the application for expert opinion has been belatedly filed cannot be the reason for dismissal because sufficient and reasonable opportunity must be given to the petitioners to establish their case. Hence, the order passed by the trial Court in I.A.No.205 of 2021 is liable to be set aside.

4.On the other hand, the learned counsel appearing for the respondent would submit that the above petition filed by the revision petitioners in I.A.No.205 of 2021 is vexatious and filed in a belated stage and the trial Court has rightly dismissed the application which calls for no interference.

5.Heard on both sides and records perused.

6.According to the revision petitioners, it is submitted that originally, the sale agreement was executed for a sale consideration of Rs.36,00,000/-



and advance of Rs.3,50,000/- was paid. In order to avoid the stamp duty and registration charges, the respondent prepared another agreement on the same day for lesser value of Rs.10,50,000/- and registered the same. However, the first respondent suppressed the said unregistered agreement for sale and approached the Court with unclean hands. It is further submitted that since the witnesses in the said unregistered agreement are the relative and husband of the respondent/plaintiff they would not support the case of the respondent/defendant. Hence, it is necessary to compare the signature of the respondent found in Ex.B1-unregistered sale agreement and Ex.A1-registered sale agreement to establish the petitioners' case.

7.Considering the above facts, this Court is of the opinion that by comparing the signatures found in Ex.B1 and Ex.A.1 would be necessary to reach a fair adjudication. Therefore, the order passed by the trial Court in I.A.No.205 of 2021 is set aside. The trial Court is directed to appoint an Advocate Commissioner to produce the documents marked as Ex.B1 and Ex.A1 for comparison by an expert and complete the above task within a period of two months.



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WEB COPY 8. Accordingly, this Civil Revision Petition stands allowed. No costs.

Consequently, connected miscellaneous petition is closed.

17.11.2023

vsn

To

The VI Additional District Judge, Madurai.



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K.GOVINDARAJAN THILAKAVADI.J,

vsn

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