



C.R.P(MD)No.1484 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 25.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.1484 of 2014

Duraisamy Pillai

... Petitioner

Vs

1.Seeniyammal

2.Sivakumar

3.Gunaseelan

4.Muthukumar

5.Alagar

6.Jeyakrishnan

*(R2 to R6 are brought on record as
LRs of the deceased sole respondent*

... Respondents

PRAYER :-

This Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the order dated 13.02.2014 made in I.A.No.751 of 2013 in O.S.No.415 of 2004 on the file of IInd Additional Subordinate Judge, Madurai.



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For Appellant : Mr.PT.S.Narendra Vasan
For R2 to R6 : Mr.D.Malaichamy

ORDER

This Civil Revision Petition is filed assailing the order passed by the learned IInd Additional Subordinate Judge, Madurai, in I.A.No.751 of 2013 in O.S.No.415 of 2004, filed by the petitioner / respondent/plaintiff.

2. I.A.No.751 of 2013 was filed by the petitioner / defendant one Seeniammal, seeking to send the sale agreement dated 01.03.2001 along with registered mortgage deed dated 29.01.1999, copy of registered sale deed of the suit property dated 16.09.1992, the petitioner / defendants vakalat, written statement, counter and other affidavits filed by the petitioner/ defendant for obtaining the opinion of handwriting expert. Counter was also filed by the respondent for the said I.A., and on the basis of which after hearing both the parties, the learned Subordinate Judge, was pleased to allow the said petition on 13.02.2014.



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3. The original suit in O.S.No.415 of 2004 was one for specific performance directing the defendant to receive the balance of sale consideration of Rs.1,79,100/- from the plaintiff and to execute a sale deed in favour of the plaintiff at his cost within the time fixed by the Court. The said suit was decreed as prayed for on 07.04.2011 by the IInd Additional Subordinate Judge, Madurai. As against the same, an appeal suit in A.S.No. 27 of 2011 was preferred by the respondent herein Seeniammal on 18.07.2012, the Principal District Judge, Madurai, remanded the appeal for the following reasons:

"13. The following facts are not in dispute: The appellant / defendant is the owner of the suit property. There were 9 tenants in the suit property and 5 persons have vacated the premises and handed over possession of the property to the defendant and the remaining 4 have not vacated. The plaintiff is one among the 4. The defendant filed RCOP 32/94 against the plaintiff and other 3 tenants for eviction and the same was allowed and the appeal preferred against the judgment was also dismissed and the revision filed before Hon'ble High Court was also dismissed.

14. While the execution petition was pending, it is alleged that the defendant agreed to sell the suit property to the plaintiff and the sale amount was fixed at Rs.2,25,100/- and received and



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advance of Rs.46,000/- within 6 months and a sale agreement was executed on 01.03.2001. The defendant claimed that Ex.A1 sale agreement was fraudulently concocted by plaintiff. The defendant further contended that Ex.A.1 is true, it would have been mentioned in the earlier legal proceedings but no whisper has been made by the plaintiff in the eviction proceedings. Further if Ex.A1 was in existence, there was no need for the plaintiff to send demand draft for Rs.240/- to the defendant towards rent on his behalf and other tenants on 10.08.2002 after the alleged execution of Ex.A1 dated 01.03.2001. Exs.A7 to A10 are the complaints alleged to have given by the plaintiff to police and other officials. On perusal of Ex.A7 and A10 it is revealed that some middle men have obtained money from the plaintiff on behalf of the defendant but he himself has admitted that the defendant denied the receipt of money. P.W.2 has also not spoken anything about the execution of Ex.A1. Further the scribe of Ex.A1 has not been examined to prove its genuineness. Moreover, the readiness and willingness on the part of the plaintiff to perform his part of contract and the means of the plaintiff to pay the sale consideration have not been dealt with trial court. Also the plaintiff has not given proper explanation for non deposit of balance of sale consideration.

15. On perusal of the lower Court judgment it is revealed that 2 months time has been granted to execute the sale deed, But the decree is drafted and the defendant was ordered to pay



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the balance of sale consideration of Rs.1,79,100/- into Court within 1 month from the date of decree and the defendant was ordered to receive the sale consideration and execute sale deed within 1 month which is not in accordance with the judgment. So on this ground alone, the judgment and decree of the lower court are not sustainable.

16. For the foregoing reasons, this court feels that the matter has to be remanded back to the lower court for fresh disposal according to law in the light of the observations contained in this judgment by giving opportunity to both side to adduce evidence both oral or documentary. The judgment and decree of the lower court are not sustainable in law and they are set aside. The point is answered accordingly.

17. In fine, the appeal is allowed and the judgment and decree passed by II Additional Sub Judge, Madurai, in O.S.No. 415/2004 dated 07.04.2011 are set aside and the matter is remanded back to the trial Court for fresh disposal according to law in the light of the observations contained in the judgment. The cost of appeal will abide by the result of the suit. Court fee paid on the memorandum of appeal will be refunded to the appellant. "

4. As a result of which, the original suit in O.S.No.415 of 2004 was remanded and restored to the file of the IInd Additional Subordinate Judge,



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Madurai and this I.A., came to be filed only in the remanded suit. The first appellate Court very specifically remanded the appeal with a clear direction to restore the original suit to the file of the IInd Additional Subordinate Judge, Madurai, directing to give opportunity to both sides to adduce the evidence both oral and documentary, for certain specific discrepancies mentioned by the appellate Court supra. In view of this, the learned trial Court has allowed this I.A., seeking expert opinion in various documents for the verification of the handwriting and signature of the respondent in the sale agreement. Assailing the same, this Civil Revision Petition has been filed.

5. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

6. The learned counsel for the petitioner vehemently submitted that if at all the trial Court ought to have allowed such an application it should have been effected only by way of appointing an advocate commissioner.

7. No doubt, the contention took by the petitioner's counsel is correct in terms of Section 75(e) of C.P.C., which provides that the power of the Court



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to issue Commissions, to hold the scientific, technical or expert investigation.

Section 75 of the Civil Procedure Code, 1908, reads as follows:

75. Power of court to issue commissions - Subject to such conditions and limitations as may be prescribed, the court may issue a commission -

- (a) to examine any person ;*
- (b) to make a local investigation ;*
- (c) to examine or adjust accounts; or*
- (d) to make a partition ;*
- (e) to hold a scientific, technical or expert investigation;*
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;*
- (g) to perform any ministerial act. "*

8. However, in view of the elaborate observation made by the first appellate Court as to the discrepancies in the trial conducted by the trial Court in the original suit, this Court is of the considered view that the trial Court has got inherent power under Section 161 of CPC, to make such order as may be necessary in the nature of justice or to prevent the abuse of process of the Court. When there are specific observation by the first appellate Court as to the lapses by both the parties in adducing evidence as to the reliability to the



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documents in dispute for the agreement for sale, it is needless to say that trial Court has rightly allowed I.A.No.751 of 2013. However considering the arguments of the learned counsel for the petitioner that there is a procedural error committed by the learned trial Court by not appointing an advocate commissioner to seek the expert opinion of the documents whatever sought by the I.A, petitioner, this Court specifically directs the trial Court to mark the handwriting expert opinion dated 30.12.2022 through the Deputy Director and Document Expert, Regional Forensic Science Lab., Madurai - 625 020, after giving sufficient opportunity to both the parties to cross examine the handwriting expert.

9. It is seen that already the learned trial Court has marked the handwriting opinion as Ex.C1 dated 30.12.2022. But however, I am of the considered view that the revision petitioner should be given opportunity to examine the Deputy Director and Document Expert, Regional Forensic Science Lab., Madurai - 625 020 and he may be given permission to take steps for the same.



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10. With these observation this Court by upholding the order passed by the learned II Additional Subordinate Judge, Madurai in I.A.No.751 of 2013 this Court is inclined to dismiss the Civil Revision Petition with a direction to the trial Court to give an opportunity to cross examine the expert as who ever is mentioned above. No costs.

25.04.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No

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To

- 1.The IInd Additional Subordinate Judge, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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L.VICTORIA GOWRI, J.

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