



C.R.P.(PD).No.166 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD).No.166 of 2015

and MP(MD).No.1 of 2015

1. Palaniammal (Died)

2. Ponnusamy

3. Bakiaraj @ Veeramalai

....Petitioners/Respondents/

Defendants

Vs

1.Subba Naiker

.... Respondent/Petitioner/Plaintiff

2.Palanisamy

3.Saamyammal

4.Chinna Ponnu

5.Raju

6.Rani

...Respondents

(Respondents 2 to 6 are brought on record as legal heirs of the deceased 1st petitioner vide Court order dated 25.04.2023 made in C.M.P(MD) Nos.4845 to 4847 of 2022 in C.R.P(MD) No.166 of 2015)



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PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.10.2014 in I.A.No.349 of 2012 in O.S.No.129 of 2010 on the file of the District Munsif, Kulithalai.

For Petitioners : Mr.K.Govindarajan
For Respondents : Mr.Sridharan – for R1
: No appearance – for R2 to R6

ORDER

The defendants in a suit for permanent injunction are the revision petitioners. The respondent/plaintiff had filed a suit in O.S.No.129 of 2010 on the file of the District Munsif, Kulithalai for the relief of permanent injunction based upon an unregistered sale deed, dated 28.08.1991 said to have been executed by the first defendant in favour of the plaintiff.

2. The defendants had filed written statement contending that the said document dated 28.08.1991 is a forged document. This has prompted the plaintiff to file I.A.No.349 of 2012, seeking appointment of an Advocate Commissioner to get the opinion of a finger print expert for



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comparison of the thumb impression of the first defendant with the admitted thumb impression of the first defendant and get a report.

3. The trial Court, after considering the submissions made on either side, had allowed the said application with a direction to the first defendant to appear before the Court to put her thumb impression in a white paper, so that, the same could be compared with her alleged thumb impression in the sale deed, dated 28.08.1991. The said order is under challenge in the present revision petition.

4. According to the learned counsel appearing for the revision petitioners, the document being an unregistered sale deed, the same is not admissible in evidence. Therefore, the question of sending the said document for expert opinion to find out the genuineness of the said document is not legally sustainable. Unless the document is admissible in evidence, the question of sending the documents for expert opinion would be a futile exercise.



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5. Per contra, the learned counsel appearing for the first respondent/plaintiff had contended that the plaintiff had filed I.A.No.743 of 2014 for impounding the said document for payment of penalty, and stamp duty, so that, it becomes admissible in evidence for collateral purposes. Therefore, the admissibility of the document could be decided at a later point of time. He further contended that the order passed in I.A.No. 349 of 2012 cannot be enforced, at this point of time, in view of the fact that the first defendant has passed away on 07.08.2015. Hence, he submitted that he may be granted liberty to file a fresh application for sending document for expert opinion on the basis of the admitted thumb impression of the first defendant, which could be produced at a later point of time.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the material on records.

7. As per the order in I.A.No.349 of 2012, the first defendant was called upon to put her thumb impression before the Court, so that, the same could be compared with the thumb impression found in the



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unregistered sale deed dated 28.08.1991. Since the first defendant had passed away on 07.08.2015, the said order has become unenforceable.

8. Therefore, this Court is not expressing any opinion upon sending the document for expert opinion. It is for the plaintiff to file a fresh application, if he is so advised, for comparing the thumb impression of the first defendant with any other admitted thumb impression of the first defendant.

9. With the above observations, this Civil Revision Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

02.08.2023

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

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To

1. The District Munsif,
Kulithalai.



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R.VIJAYAKUMAR, J

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