



C.R.P.(MD).No.2104 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2104 of 2017

and

C.M.P(MD) No.10465 of 2017

Subbaiah

... Petitioner/Respondent/
Plaintiff

-vs-

1. Periyakaruppan
2. Muthu

... Respondents/Petitioners 1 and 2/
Defendants 1 and 2

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 10.08.2017 made in I.A.No.145 of 2015 in O.S.No.72 of 2006 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.J.Bharathan
for Mr.P.Thillakkumar



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ORDER

The present Civil Revision Petition has been filed by the petitioner/ plaintiff, under Article 227 of Constitution of India, against the fair and decreetal order dated 10.08.2017 made in I.A.No.145 of 2015 in O.S.No.72 of 2006 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

2. The short facts which give rise to the instant Civil Revision Petition are that the revision petitioner herein is the plaintiff and the respondents herein are the defendants 1 and 2 before the trial Court.

3. According to the petitioner, the respondents have filed an application under Sections 45 and 73 of Evidence Act r/w 151 C.P.C to send for Ex.B.13 to compare with documents which have been marked, and also with the signature of the plaintiff as found in the deposition. The said application was refuted by the respondents on the ground that the plaintiff is not a party to the said document and also on the ground that, those documents have not been registered and stamped. The petitioner has challenged the very admissibility



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of the documents. Since the very admissibility of the documents is under challenge, they contented that there is no point in sending the documents for the handwriting expert. However, the learned trial Judge after going into the various aspects, has ultimately allowed the application, and ultimately found that both the plaintiff as well as the defendants claim title over the property, based upon the partition of the year 1945 and oral partition of the year 1990. Therefore, there is nothing wrong in sending Ex.B.13, Muchalika before the handwriting expert to compare the signature.

4. The learned counsel for the revision petitioner would strenuously object the findings of the learned trial Judge, and submitted that when the plaintiff is not a party to the documents and that when the admissibility of the documents is in question, the documents cannot be sent for comparison of the handwriting expert, and in support of his case, the learned counsel for the petitioner has relied upon the following judgments:



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(i) 2017 (1) CTC 198 (S.Thirumalai Vs.S.Govindarajan (died) and others)

(ii) 2001 AIR (Madras) 135 (A.C.Lakshmipathy and another vs. A.M Chakrapani Reddiar and five others.

5. Per contra, the learned counsel appearing for the respondents has invited the attention of this Court about the deposition given by the plaintiff. Wherein he has categorically given consent to send for the documents for comparison by the handwriting expert. It is also the submission of the learned counsel for the respondents that, already, in pursuance of the order, documents have already been sent for the handwriting expert and after comparison the report is also available before the trial Court, in a sealed cover.

6. This Court has given anxious consideration to the submissions of the learned counsel on either side.



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7. From the submissions of the learned counsel for the petitioner, what emerges is, that his objection is solely on the ground that he was not a party to the documents and that the documents are inadmissible before the Court. But, when we decide the application under Section 45 of the Indian Evidence Act, the admissibility of the documents cannot be gone into. Now, that the defendants want only to compare the signature found in Ex.B.13, and which prayer of the defendants was fairly accepted by the plaintiff while he was confronted during cross examination. When the plaintiff has admitted that the documents can be sent for the comparison by the handwriting expert, and retracting at a belated stage, cannot be encouraged.

8. Therefore, in view of the above facts and circumstances, this Court is of the view that the order passed by the learned trial Judge is a well considered one, and this Court does not want to interfere with the same and it is also pertinent to mention here that the report of the handwriting expert is also available before the trial Court.

9. In the result, this Civil Revision Petition is dismissed. Considering



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the fact that the suit is of the year 2006, the learned trial Judge is directed to dispose of the suit in O.S.No.145 of 2015 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. At this juncture, the learned counsel for the petitioner urged this Court to leave the issue of admissibility in respect of Ex.B.13. Inexorably, the petitioner can very well challenge the admissibility before the trial Court. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

12.07.2023

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

1. The District Munsif cum Judicial Magistrate,
Thirumayam.



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C.KUMARAPPAN,J.

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