



WEB COPY



CRP.No.3315 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRP.No.3315 of 2022

1.K.Venkatachalam
2.V.Parimala

... Petitioners

Vs.

B.Velumurgan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition and set aside the fair and decreetal order in dated 23.09.2021 in IA.No.1 of 2019 in OS.No.55 of 2017 on the file of the Subordinate Judge, Gudiyattam, Vellore District.

For Petitioners : Ms.R.T.Sundari
for M.P.Jayaprakash

For Respondent : Mr.N.Manoharan



CRP.No.3315 of 2022

ORDER

WEB COPY

This Civil Revision Petition has been filed as against the order passed in IA.No.1 of 2019 in OS.No.55 of 2017 dated 23.09.2021, wherein the petitioners herein have filed a petition before the trial Court under Order XXVI Rule 10 of the Code of Civil Procedure, to appoint an Advocate Commissioner to take the suit sale agreement along with endorsement made in the sale agreement to Forensic Department to compare the admitted signatures of the defendant in the suit Sale agreement dated 05.07.2012 vide Doc.No.5518/2012 with signature of the defendant made in the endorsement. The trial Court dismissed the application, against which, the present revision petition is filed.

2. According to the petitioners they are defendants in the suit, the respondent herein has filed a suit for specific performance alleging that the suit sale agreement has been executed by the petitioners on 05.07.2012 and thereafter made an endorsement in the sale agreement on 01.06.2013. The said endorsement has not been made by the petitioners and the said endorsement is a forged one. Therefore, the said sale agreement has to be



CRP.No.3315 of 2022

subjected for expert opinion to compare the admitted signature of the defendant in the suit sale agreement with the signature of the defendant made in the endorsement. However, the trial Court, without considering the application for comparison through Forensic Department by way of appointing an Advocate Commissioner to take suit sale agreement to the Forensic Lab, dismissed the same.

3. According to the respondent, he has filed the suit for the relief of specific performance and the suit is posted for examination of witnesses. The petitioners have filed their written statement in the year 2015 itself and thereafter, they filed this petition after two years disputing the signature of the first defendant in the endorsement, but the signature of the second defendant was not disputed. The petitioners only in order to delay the proceedings filed the said petition and hence, the petition is liable to be dismissed.

4. Before the trial Court no oral or documentary evidence is adduced on both sides. After hearing both sides the trial Court has dismissed the petition.



CRP.No.3315 of 2022

WEB COPY

5. The learned counsel for the petitioners would contend that the petitioners are the defendants in the suit and they executed a sale agreement in favour of the respondent dated 05.07.2012. Thereafter, the respondent herein has filed a suit alleging that the petitioners have made an endorsement in the suit sale agreement on 01.06.2013, but that endorsement was not made by the petitioners and the signature of the petitioners have been forged by the respondent and therefore, they filed a petition before the trial Court to compare the signatures by an expert taking the document to Forensic Lab through Advocate Commissioner. The trial Court without considering the same dismissed the petition stating that the petition is filed belatedly and the Court itself can compare the signatures under Section 73 of the Indian Evidence Act. But the trial Court failed to consider that the Court is not an expert. Though the Court can compare the signatures under Section 73 of the Indian Evidence Act, the Court is not an expert to adopt the scientific method to compare the signatures as if the expert. Therefore, the order passed by the trial Court is liable to be set aside.



CRP.No.3315 of 2022

WEB COPY

6. The learned counsel for the respondent would contend that the petitioners have filed a petition, but the first petitioner alone has denied his signature and another petitioner's signature has not been denied and already the case is posted for trial. At this stage, only to delay the proceedings, they have filed this application. It is for the plaintiff to prove the case through documents and the respondent cannot compel the plaintiff to take the documents for expert opinion. Therefore, the trial Court after considering all the aspects dismissed the petition. Therefore, the order passed by the trial Court is not in order and the present petition is liable to be dismissed.

7. This Court heard both sides and perused the records.

8. In this case, the respondent has filed a suit for specific performance of contract based on the sale agreement and in the sale agreement, he alleged that the respondent made an endorsement on 01.06.2013 after receipt of Rs.10,000/-. The above said execution of sale agreement is admitted by the petitioner herein but endorsement made by the



petitioners was denied by them. Therefore, the petitioners filed an application before the trial Court to compare the signatures through expert and thereby the Commissioner has to be appointed to take the document to the Forensic Lab.

9. The learned counsel appearing for the respondent strongly opposed this petition stating that the respondent is the plaintiff and it is for him to prove the case by sufficient evidence and the defendant need not take the documents to expert opinion through Commissioner. It is true that the plaintiff has to prove the case, however, when the plaintiff alleging that there is an endorsement made by the petitioners and the same was denied by them, the respondent also can take steps to disprove the same, thereby they filed an application for appointment of Commissioner to take the disputed documents to Forensic Lab for comparison of signatures through expert. The trial Court failed to consider that the Court is not an expert to compare the signatures on naked eye and some expert could compare the signatures by adopting some scientific methods. Therefore, it is appropriate to compare the signatures through the expert. When the defendants themselves denied the cause of action and disputing signatures made in the endorsement by them, it is



CRP.No.3315 of 2022

appropriate to give fair chance to them to prove the said contention.

Therefore, the order passed by the trial Court in declining the appointment of Commissioner is liable to be set aside.

10. In the result, this Civil Revision Petition is allowed by setting aside the order passed by the trial Court in I.A.No.1 of 2019. The trial Court is directed to appoint an Advocate Commissioner to take the suit sale agreement along with endorsement made there on to compare the admitted signatures found in the agreement and the disputing signatures found in the endorsement of the agreement and dispose of the application. No costs.

04.07.2024

Index : Yes / No
Internet : Yes / No
dna

To

The Subordinate Judge, Gudiyattam, Vellore District.



WEB COPY



CRP.No.3315 of 2022

P.DHANABAL., J.
dna

CRP.No.3315 of 2022

04.07.2024