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C.R.P.No. 1136 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

C.R.P.No. 1136 of 2024

and

C.M.P.No.5888 of 2024

1.M.Sivakami

2.M.Umarani

3.S.Mallika

4.S.Gokul

5.S.Aswathi

.. Petitioners

Versus

V. Jayanthi

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 23.01.2024 passed in I.A.No.1 of 2023 in A.S.No.67 of 2023 on the file of the learned Principal District Court, Tirupur.

For Petitioners : Mr.N.Mayilsamy

For Respondent : Mr.A.K.Sriram, Senior Counsel
for Mr.M.R.Thangavel

ORDER



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This Civil Revision Petition has been filed seeking to set aside the order dated 23.01.2024 passed in I.A.No.1 of 2023 in A.S.No.67 of 2023 by the learned Principal District Judge, Tiruppur dated 23.01.2024, dismissing the petition filed under Section 45 of the Indian Evidence Act read with Section 151 of Code of Civil Procedure to call for the opinion of the handwriting expert regarding the genuineness of the signatures of Sivakami, Subramaniyam and Umarani in Ex.A2 and Ex.A3 for being compared with the release deeds dated 26.07.2010 and 10.03.1995 respectively.

2. Brief facts:-

2.1. The petitioners are the defendants in O.S. No.44 of 2012 on the file of Principal Subordinate Court, Tiruppur, which was filed for the relief of specific performance. The respondent/plaintiff had contended that the petitioners 1 and 2 and their brother Subramaniyam (since died during the pendency of the suit and the petitioners 3 to 5 herein are his legal heirs) had executed a panchayat Muchalika(Ex.A2) and a sale agreement (Ex.A3) in her favour on 03.03.2011 and thereby, she is entitled for specific performance.

2.2. The petitioners/defendants contested the suit on various grounds and had also contended that the signatures and thumb impression found in the



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panchayat Muchalika/Ex.A2 and sale agreement/Ex.A3 dated 03.03.2011

were forged. The petitioners/defendants have also filed I.A. No. 155 of 2017 in O.S. No.44 of 2012 to send the panchayat Muchalika and sale agreement for an expert opinion for comparing the signature and thumb impression found therein along with the admitted signature and the thumb impression of the executant and to send a report. The petitioners have also filed a certified copy of the sale deed and later the original sale deed was filed before the Court as contemporaneous document to compare the signature. However, since the petitioners have not pursued the matter further, I.A.No.155 of 2017 in O.S.No.44 of 2012 had been dismissed for default on 18.02.2020. Later, the suit was decreed against them. Challenging the judgment and decree made in O.S. No.44 of 2012 on 07.12.2022, the petitioners/defendants have filed A.S. No. 67 of 2023 before the Principal District Court, Tiruppur. Along with the appeal, they have filed I.A. No. 1 of 2023 in A.S. No. 67 of 2023 under Section 45 of the Indian Evidence Act for expert opinion to compare the signatures of Sivakami, Subramaniam and Umarani in Ex.A2 and Ex.A3 with that of the admitted signatures of petitioners 1 and 2 herein (Sivagami and Umarani) in the release deeds dated 26.07.2010 and the admitted signatures of second petitioner viz.,Umarani and the deceased Subramaniam found in the release deed dated 10.03.1995. The respondent/plaintiff had filed a counter opposing the petition. The appellate



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Court, by an order dated 23.01.2024, while observing that if the application is allowed, then the opinion of the expert has to be received, objections of both sides has to be called for besides permitting the parties to adduce evidence in respect of the said opinion given by the expert and would amount to indirectly re-opening the case by remanding the matter for fresh trial had dismissed the same. As against the said order, the present civil revision petition has been filed.

3. The learned counsel appearing for the petitioners would submit that the suit was filed for specific performance based on panchayat Muchalika/Ex.A2 and the sale agreement/Ex.A3 dated 03.03.2011. The petitioners 1 and 2 and Subramaniam, who is the son of petitioner No.1 and brother of petitioner No.2, have contested the suit stating that the thumb impression and the signatures in panchayat Muchalika and sale agreement dated 03.03.2011 were forged. The petitioners, at the earliest point of time, have filed I.A. No. 155 of 2017 to send those documents for comparison of signatures to an expert and had earlier filed the certified copy of the sale deed and later filed the original document, which are stated to be as contemporaneous document and sought for an expert opinion by comparing the signature and thumb impression found therein along with the admitted signature and the thumb impression of the defendants and to send a report.



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The brother of the petitioners viz., Subramaniyam, who was taking care of the litigation died during the year 2018 and the other defendants were brought on record as legal heirs in the year 2019. Since the second defendant viz., Subramaniyam was the only male member, he had pursued the suit and after his demise, no steps had been taken and the application was dismissed for default and the suit has been decreed in favour of the respondent/plaintiff. As against the said judgment and decree, the petitioners have filed an appeal in A.S.No.67 of 2023 before the Principal District Judge, Tiruppur and along with the appeal, they have filed I.A.No.1 of 2023 seeking to send Exs.A2 and A3 for comparison of signatures along with the admitted signatures in the release deeds dated 26.07.2010 and 10.03.1995. The petitioners have stated the reason which prevented them to pursue the application in I.A.No.155 of 2017 in O.S.No.44 of 2012, which led to the dismissal of the suit for default. The petitioners had also stated that it was their main defence that the signatures of the defendants found in Ex.A2 and A3 were forged. The learned counsel would further submit that a bounden duty is cast on the petitioners to disprove the case of the respondent/plaintiff and unless the document is sent for hand writing expert and the opinion is obtained, the valuable right of the petitioners in the appeal would be defeated. Further, there had been no delay on the part of the petitioners in taking steps to compare the disputed signature whereas the appellate Court, without taking



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into consideration the necessity of sending the documents for comparison of signatures, had dismissed the application and would thereby, seek to set aside the order.

4.Mr.A.K.Sriram, learned Senior Counsel appearing for the respondent, would submit that the suit was filed by the plaintiff on 24.01.2012. The defendants have filed the written statement on 18.11.2013 whereas the application in I.A.No.155 of 2017 in O.S.No.44 of 2012 under Section 45 of the Indian Evidence Act for the very same relief was filed four years after filing of the written statement. Even thereafter, the defendants have failed to prosecute the same and it was allowed to be dismissed for default on 18.02.2020. The said application was not restored by the petitioners/defendants till the disposal of the suit on 07.12.2022. He would further submit that the petitioners have once again filed an application for the very same relief seeking for an opinion of handwriting expert and it is not the only mode to prove or disprove a document and the Appellate Court rightly holding that the plaintiff had examined the attestors of disputed document so as to prove the same and the said witnesses have also been cross-examined on behalf of the defendant found that there is no necessity for sending the document for hand writing expert at this stage. He would further submit that even at this stage, if the expert opinion has to be obtained, it



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would amount to letting in additional evidence and it should have been done in consonance with the conditions embodied under Order 41 Rule 27 of the Code of Civil Procedure and without such application the petition for expert opinion is not maintainable and the appellate Court had rightly dismissed the same and he would seek for dismissal of the revision.

5. In reply, the learned counsel for the petitioners would submit that the petitioners have earlier filed an application under Section 45 of the Indian Evidence Act before the trial Court and despite production of certified copy and original of the settlement deed dated 26.07.2010, the trial Court has ignored to consider the same and passed the order against the petitioners. The petitioners even at the time of filing the appeal have filed the petition seeking to get the opinion of the handwriting expert regarding the genuineness of the signatures of Sivakami, Subramaniam and Umarani, whereas the appellate Court has failed to consider the same. He would also submit that the appeal is only a continuation of suit and the opportunity of letting in evidence to the petitioners/defendant cannot be denied on mere technicalities and in the interest of justice and for any other substantial cause the petition ought to have been allowed.

6. Heard the learned counsel for the petitioners and the learned Senior



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counsel for the respondent.

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7.The petitioners are the defendants in the suit in O.S.No.44 of 2012 on the file of the Principal Sub-Court, Tiruppur, filed for specific performance. The respondent/plaintiff had contended that the petitioners 1 and 2 and Subramaniyam (since died during the pendency of the suit, the petitioners 3 to 5 herein are his legal heirs) have executed a Panchayat Muchalika and sale agreement in her favour on 03.03.2011 and based on the same, she had asserted that she is entitled for execution of sale deed in her favour in respect of the plaint schedule mentioned property. The petitioners contested the suit on various grounds and questioned the validity and enforceability of the Panchayat Muchalika as well as the sale agreement on the ground that they are forged. The petitioners also filed I.A. No.155 of 2017 to send the sale agreement to handwriting expert for comparison of their signatures and to get an opinion thereof. It is also stated that the deceased second defendant, who was the only male member in the family was looking after the case, died during the year 2018 and subsequently, the defendants 4 to 6 were brought on record as his legal heirs in the year 2019. Since there was no one available to pursue the matter, the application in I.A.No.155 of 2017 was dismissed for default on 18.12.2020. The petitioners have also filed the certified copy of the sale deed and later the original was filed before the trial Court to prove their



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bona fides, whereas the petition was dismissed for default and the suit was decreed against them without evaluating the necessity of an expert opinion.

8. Aggrieved by the decree of the trial court, the petitioners have filed A.S.No.67 of 2023 and along with the appeal, they have filed I.A.No.1 of 2023 seeking to call for the opinion of the handwriting expert and to ascertain the genuineness of the signature of the 1st and 2nd petitioners in Ex.A2 and Ex.A3 for being compared with the release deeds dated 26.07.2010 and 10.03.1995 respectively. The appellate Court, instead of considering the claim of the petitioners on merits, dismissed the application observing that if the application is allowed, then the opinion of the expert has to be received, objections of both sides has to be called for besides permitting the parties to adduce evidence in respect of the said opinion given by the expert and this would amount to indirectly re-opening the case by remanding the matter for fresh trial.

9. This Court is of the opinion that the appeal is a continuation of the suit and the right of the petitioners to seek for comparison of the signature in the disputed documents cannot be curtailed on mere technicalities. The defendants have to be permitted to project the pivotal defence raised by them in the suit filed against them. No doubt, the petitioners have already filed an



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application before the trial court under Section 45 of the Indian Evidence Act and it was dismissed. Subsequently, the suit was also decreed exparte against the petitioners without considering the same. In other words, the pleadings raised by both sides have not been evaluated on merits.

10.The endeavour of every Court should be to do substantial justice by disposing of matters on merits and not get mired by mere technicalities. However, as pointed out by the learned Senior Counsel, the application for Expert opinion without an application under Order 41 Rule 27 C.P.C., may not be maintainable, when such an application has already been filed before the trial Court and left to be dismissed for default. Further, this Court also finds that the Appellate Court has also not given any finding with regard to the documents sought to be send for Expert Opinion in the impugned order. In view of the above, the order passed by the first appellate Court is liable to be set aside.

11.Accordingly, the order passed by the first Appellate Court in I.A. No. 1 of 2023 in A.S. No. 67 of 2023 dated 23.01.2024 stands set aside and the matter is remitted back for reconsideration. The petitioner shall file an application under Order 41 Rule 27 of the Code of Civil Procedure. If any such application is filed, the appellate Court shall deal with it first on merits



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and in accordance with law and decide the application filed in I.A.No.1 of 2023 in A.S. No. 67 of 2023. It is made clear that the observations made in this civil revision petition will not have any bearing on any further proceedings before the Appellate Court.

14.The Civil Revision Petition stands **disposed of** accordingly. No costs. Consequently, connected civil miscellaneous petition is closed.

22.08.2024

Index : Yes / No
Speaking order / Non-speaking order
dsa/raa

Note: Issue today(10.09.2024)

To:-

The Principal District Judge,
Tirupur.



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A.D.JAGADISH CHANDIRA, J.

dsa/raa

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