



CRP.No.2162 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.2162 of 2021
and
CMP.No.16395 of 2021

1.H.Jamaludeen
2.Durai Shawar
3.Asma Tasneem

... Petitioners

Vs.

Naseem Afzal

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated on 05.08.2021, in IA.No.1 of 2019 in OS.No.153 of 2015 by the learned Principal Subordinate Judge, Chengalpattu and allow this Civil Revision Petition.

For Petitioners : Mr.R.Rajesh

For Respondent : Mr.N.R.Anantha Rama Krishnan



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the petitioners seeking appointment of Advocate Commissioner to take letter executed by the husband of the sole respondent/plaintiff dated 25.10.1994 and original power deed allegedly executed by the respondent in favour of the first petitioner dated 07.06.1999 for comparison with admitted signatures by expert.

2. The respondent herein filed a suit seeking declaration that sale deed dated 12.07.2011 executed by the first petitioner in favour of the second petitioner was null and void. He also sought for further declaration that the sale deed dated 12.07.2011 executed by the first petitioner in favour of the third petitioner was also null and void. He also sought for injunction restraining the petitioners from interfering with his alleged possession. The suit was mainly contested by the petitioners on the ground that the respondent executed an unregistered power of attorney dated 07.06.1999 in favour of the first petitioner and in his capacity as power of attorney, he executed the



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impugned sale deeds in favour of the petitioners 2 & 3. It was further contended by the petitioners that they decided to purchase the plots A4 to A7 from the respondent and evidencing the same, a letter was executed on 20.05.1994 by the husband of the respondent.

3. The trial in the matter already commenced and it is posted for recording evidence of DW1. At this stage, the present application has been filed by the petitioners seeking comparison of the above said documents with the contemporary documents by expert. The application was mainly dismissed by the Court below on the ground that the petitioners failed to furnish the contemporary documents for comparison. It was also observed by the Court below that Ex.A2 certified copy of the sale deed dated 10.02.1994 may not be useful to compare the letter dated 25.10.1994 as certified copy would not have signature of the executant of the sale deed. Therefore, the Court below has dismissed the application. Aggrieved by the same, the petitioners are before this Court.

4. The learned counsel for the petitioners submitted that the



petitioners are ready to produce the original sale deed dated 10.02.1994 and the certified copy of which was marked as Ex.A2. The learned counsel for the petitioners further submitted that the petitioners are ready to get certified xerox copy of the mortgage deed executed by the respondent/plaintiff on 23.07.2001 which is reflected in the Encumbrance certificate marked as Ex.A6 so that the disputed power deed dated 07.06.1999 can be compared with the signature of the respondent found in mortgage deed dated 23.07.2001.

5. The learned counsel for the respondent vehemently opposed the revision on the ground that the letter dated 25.10.1994 allegedly executed by the husband of the respondent would not support the case of the petitioners as there was no plea in the written statement about their possession from the year 1994. The learned counsel for the respondent further submitted that the specific case of the petitioners that they got possession of the plots only from the year 1999. Therefore, even assuming the letter dated 25.10.1994 allegedly executed by the husband of the respondent was proved to be genuine, it will not support the case of the petitioners.



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6. Whether the letter dated 25.10.1994 relied on by the petitioners is genuine or not is the matter to be decided at the time of final disposal of the suit. In the pleadings, the petitioners referred about the letter. Therefore, the petitioners are entitled to seek comparison of the impugned letter dated 25.10.1994 with the admitted document namely sale deed executed by the respondent in favour of the first petitioner on 10.02.1994. It is the specific case of the respondent that the first petitioner is not validly constituted power of attorney of the respondent. Therefore, whether the power deed relied on by the petitioners dated 07.06.1999 is genuine or not is the question to be decided in the suit. Now, the learned counsel for the petitioners submitted that he is ready to produce the certified xerox copy of the mortgage deed executed by the respondents dated 23.07.2001 for comparison of the impugned signature of the respondent in power deed dated 07.06.1999. The said document is nearly two years later to the impugned power deed. Therefore, the same can be compared with impugned document.

7. The learned counsel for the respondent submitted that the



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petitioners may be directed to mark those two contemporaneous documents and then seek comparison. The learned counsel for the petitioners agreed for the same. Therefore, the petitioners are directed to mark the original sale deed dated 10.02.1994, certified xerox copy of the mortgage deed dated 23.07.2001, original letter dated 25.10.1994 and original power deed dated 07.06.1999 and after marking all these four documents, the Court below is directed to send the impugned documents for comparison with the above said contemporary documents to be marked by the petitioners.

8. In view of the undertaking given by the petitioners that he is ready to produce the contemporaneous documents, namely original sale deed dated 10.02.1994 and certified xerox copy of the mortgage deed dated 23.07.2001 for comparison, this Civil Revision Petition is allowed by directing the Court below to send the impugned documents letter dated 25.10.1994 and power deed on 07.06.1999 for comparison with the original sale deed dated 10.02.1994 and certified xerox copy of the mortgage deed dated 23.07.2001. The Court below is directed to complete the entire process within a period of 12 weeks from the date of receipt of copy of this order.



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9. With the above direction, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No
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To

The Principal Subordinate Judge, Chengalpattu.



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