



WEB COPY



C.R.P.No.3244 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.3244 of 2023

and

C.M.P.No.19993 of 2023

1.M/s.Vaishnavi INFRA,
A Partnership Firm,
Rep by its Managing Partner,
Office at No.102, Gangothri Pearl, 35th Cross,
19th Main BSK, II Stage,
Bengaluru – 560 070,
Karnataka.

2.L.K.Mani

... Petitioners

Vs.

G.Saravanan

... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to set aside the fair and decreetal order in I.A.No.2 of 2022 in O.S.No.138 of 2020 dated 23.06.2023 on the file Additional District Court, Hosur.



WEB COPY



C.R.P.No.3244 of 2023

For Petitioners : Ms.K.Abhirame
for Ms.V.Srimathi

For Respondent : Mr.V.Nicholas

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.2 of 2022 in O.S.No.138 of 2020 dated 23.06.2023 on the file Additional District Court, Hosur.

2.The petitioners/defendants 1 and 2 in O.S.No.138 of 2020 filed I.A.No.2 of 2022 under Order 26 Rule 10(A) of C.P.C. r/w Section 45 of Indian Evidence Act to send the sale agreement dated 29.04.2019/Document No.2 in the list of documents in the suit to handwriting finger print expert to compare with the admitted signatures in vakalath, written statement, sale deed dated 25.09.2015/Document No.1 through Court Commissioner for expert opinion. This petition was dismissed by an order dated 23.06.2023, against which, the present revision.



C.R.P.No.3244 of 2023

WEB COPY

3.Ms.K.Abhirame, learned counsel for petitioners submitted that the Court below in dismissing the application filed under Section 45 of the Indian Evidence Act as to compare the signatures on the alleged sale agreement dated 29.04.2019 with that of plaint, vakalat, sale deed, is not sustainable one. The trial Court ought to have appreciated that the fraudulent deed dated 29.04.2019 and the sale deed dated 11.07.2019 are contemporaneous in point of time and the observation made by the trial judge that it is subsequent to the impugned document and therefore impermissible evidence for comparison, is legally untenable and factually absurd. Further, the documents dated 25.09.2015, 29.04.2019 and 11.07.2019 are the documents, which are listed along with the plaint. Further, Document No.1 dated 25.09.2015 and Document No.3 dated 11.07.2019 are certified copies. The originals are with the petitioner. The entire case of the respondent/plaintiff rest on Document No.2 dated 29.04.2019, which is an unregistered document. The other two documents sought to be compared



C.R.P.No.3244 of 2023

WEB COPY

along with this are registered documents. Further, the Court below failed to consider the documents proximity in point of time and the admitted document is distanced by 4 years cannot be said to be lagging in time and unfit for comparison. Further submitted that the petitioner has offered and submitted the original document of sale deed dated 25.09.2015 and 11.07.2019 to be compared with impugned sale deed dated 29.04.2019, not properly considered. Whether the signatures found in the impugned document are genuine or otherwise it can be confirmed only after getting the signatures, compared, studied and verified by the expert and it would be helpful for the Court to come at a just decision. If any difference is found as contended by the petitioner, that by itself would be indicative of the consistent stand of the petitioners that the impugned sale agreement deed dated 29.04.2019 is a forged one. The study of this fundamental aspect to arrive at just conclusion has been ignored by the trial Court.



C.R.P.No.3244 of 2023

WEB COPY

4.She further submitted that the suit property belongs to the first petitioner, a partnership firm consisting of three partners, namely, Mr.L.K.Mani/second petitioner herein and Mr.K.A.Venkatesh Kumar and Mr.C.N.Rajendra, who are the defendants 3 and 4 in the suit. Thus, without a signature of the other two partners, no sale agreement can be entered. Further submitted that defendants 6 and 7, who are the subsequent purchasers of the property, produced the original sale deed dated 25.09.2015 and subsequent sale deed dated 11.07.2019, which is sufficient for comparison. The Lower Court justification that sale deed dated 25.09.2015 cannot be used for comparison with impugned document dated 29.04.2019, since it is five years prior to the sale agreement is not proper, the subsequent sale deed dated 11.07.2019 might not contain normal signature and rejecting the same is also not acceptable. The documents produced by the petitioners are contemporaneous documents, which can be compared for verifying signatures or writings.



C.R.P.No.3244 of 2023

WEB COPY

5.In support of her contention, the learned counsel produced the partnership deed dated 25.09.2015 registered as Document No.4434 of 2015. Further submitted that a bare perusal of the signatures of the second petitioner in the registered Document No.4434/2015 dated 25.09.2015 and Document No.3155/2019 dated 11.07.2019 will confirm that the signature of the second petitioner in impugned document dated 29.04.2019 is with total variance. Further the partnership firm/first petitioner's seal not affixed. Further submitted that in the impugned sale deed dated 29.04.2019, along with the second petitioner one C.Chandra Sekar is shown as a partner of first petitioner's firm, which is not proper. The said Chandra Sekar was never a partner of the first petitioner's firm.

6.Further the petitioners produced two registered documents, viz., Document Nos.8085/2018 dated 28.12.2018 and Document No.832/2019 dated 23.01.2019, wherein the signatures of the second petitioner available.



C.R.P.No.3244 of 2023

WEB COPY

The contention of the petitioners is that the petitioners produced these two documents, which are registered and contemporaneous documents, can be examined along with the signature found in the disputed document. Added to it, the second petitioner is ready to give his specimen signatures, which can be used for comparative study.

7.In support of his contention, the petitioner relied upon the judgment of this Court in the case of *C.Madheswaran vs. K.C.Ramesh* reported in **2013 (6) CTC 71** and in *V.Rangaraj vs. K.R.Chidambaram and another* reported in **2016 SCC OnLine Mad 33418**. In both the judgments this Court held that the Court is not barred from sending the disputed signature for comparison to an expert, merely because the time gap between the admitted signature and the disputed signature is long. It cannot be refused. Further relying upon the Full Bench judgment of the High Court of Hyderabad reported in **2016(2) CTC 481** in the case of *Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu*, wherein it is held that the



C.R.P.No.3244 of 2023

comparison of disputed handwriting/signature with the admitted
WEB COPY
handwriting/signatures, separated by a time lag of 2 to 3 years, would be
desirable so as to facilitate expert comparison in accordance with satisfactory
standards. Further, there cannot be any hard and fast rule in this aspect and
ultimately it is the expert concerned to voice his conclusion as to whether the
disputed handwriting/signature and admitted handwriting/signature are
capable of comparison for a viable expert opinion.

8. Further, the learned counsel submitted that the Division Bench in
the case of *Janachaitanya Housing Ltd. vs. Divya Financiers*, reported in
2008(3) ALT 409, held as to the stage of proceedings when an application
can be moved by a party under Section 45 of the Indian Evidence Act, 1872.
Thus, this Court on earlier occasions held what is the contemporaneous
period and what are the documents to be forwarded to expert under Section
45 of the Indian Evidence Act and it is only the expert who to voice his



C.R.P.No.3244 of 2023

WEB COPY

concern with regard to the comparison of admitted and disputed specimen signatures and none else.

9.The learned counsel for respondent/plaintiff opposed the same stating that the documents, which the petitioners relying upon, are created documents. In this case, the petitioners fixed the sale consideration for a sum of Rs.35,00,000/- for the suit property, by a sale agreement dated 29.04.2019, substantial sale consideration amount of Rs.30,00,000/- received by defendants 2 and 4 from the respondent/plaintiff on 29.04.2019 itself and the balance sale consideration of Rs.5,00,000/- was agreed to be received within 10 months and thereafter to execute the sale deed in favour of the respondent/plaintiff and hand over the possession to the respondent. But the petitioners with an intention to de-fraud the respondent, executed a sale deed dated 11.07.2019 in favour of the defendants 6 and 7 on 11.07.2019 after the sale agreement entered with the respondent. Further submitted that the petitioner projected, C.Chandra Sekar, the 5th defendant in the suit as one of



C.R.P.No.3244 of 2023

WEB COPY

the partners, who has also signed in the sale agreement. It is to be seen that the said Chandra Sekar is a witness to the sale deed Document No.4434/2015 dated 25.09.2015. This is not disputed by the petitioner. Thus with deception, petitioners' have executed a sale deed along with Chandra Sekar, after entering sale agreement with the respondent, executed a sale deed in favour of defendants 6 and 7 in the suit. It is quite natural that subsequent partners will support the case of the petitioners. Hence, the respondent to safeguard his interest, filed a suit seeking declaration and specific performance for the petitioner to receive the balance amount of Rs.5,00,000/- and to execute sale deed in favour of the respondent. Further to declare the sale deed dated 11.07.2019 Document No.3155/2019 created by the petitioners with other defendants in the suit as null and void.

10.Further, the learned counsel submitted that the trial Court considering these aspects finding that the petitioners not stated anything



C.R.P.No.3244 of 2023

WEB COPY

about signature of Chandra Sekar available in the document, and further finding that the documents, which are sought to be sent for comparison, are not contemporaneous one, created after execution of the sale agreement with the petitioners, hence, there is every chances of signature found differently. Further, the analysis of this document would hardly helpful to decide the case before the Court and hence, prays for dismissal of the petition.

11.Considering the submissions made on either side and on perusal of the materials available on record, it is seen that the learned counsel for petitioners vehemently argued referring to the documents in the typed set. The document dated 21.09.2015 is the registered Deed of Partnership, where the signatures of second petition L.K.Mani along with K.A.Venkatesh Kumar and C.N.Rajendra, who are defendants 3 and 4 in the suit, are available. The sale deed document No.4434/2015 dated 25.09.2015 signed by the second petitioner for first petitioner, whereas the impugned document dated



C.R.P.No.3244 of 2023

WEB COPY

29.04.2019 is an unregistered document. The Document No.3155/2019 dated 11.07.2019 is the Sale Deed executed by petitioners and other partners in favour of Gaurav Gupta and Kanika Gupta/defendants 6 and 7. The impugned sale deed dated 29.04.2019, on which the entire suit rest, is unregistered document by which the respondent/plaintiff claims that he paid substantial portion of Rs.30,00,000/- as per the agreement and only balance of Rs.5,00,000/- to be paid. In the impugned sale deed there is no seal of first petitioner. Further along with the second petitioner one C.Chandra Sekar signed as partner. The said C.Chandra Sekar never a partner of the petitioners' firm. Though the said C.Chandra Sekar signed in the document No.4434/2015 as witness, it will not automatically ensure the genuineness of the sale agreement dated 29.04.2019.

12.Apart from it, the learned counsel for petitioner produced two registered documents, viz., Doc.No.8085/2018 dated 28.12.2018 and



C.R.P.No.3244 of 2023

WEB COPY

Doc.No.832/2019 dated 23.01.2019 and these are prior and near to the date of the impugned sale deed dated 29.04.2019, in which, the signature of the second petitioner is available. The original of these documents can be sent along with the impugned sale deed dated 29.04.2019 and the document dated 25.09.2015 and 11.07.2019. Added to it, the second petitioner to give his specimen signature, which can be collected in 10 sheets, each containing 5 signatures. The judgment referred above by the petitioners is in conformity to the case of the petitioners.

13.In view of the same, the disputed documents and contemporaneous Document No.8085/2018 and Document No.832/2019 and listed Document Nos.1, 2, and 3 along with specimen signature, which is obtained by the Court, all these documents to be forwarded to the handwriting expert for opinion with usual conditions. The handwriting expert opinion is essential which would sub serve substantial justice to the parties.



C.R.P.No.3244 of 2023

WEB COPY

14.In view of the above, the order passed in I.A.No.2 of 2022 in O.S.No.138 of 2020 dated 23.06.2023 by the learned Additional District Judge, Hosur is hereby set aside and accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2024

Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral Citation : Yes/No

rsi



C.R.P.No.3244 of 2023

To
WEB COPY

The Additional District Judge,
Hosur.



WEB COPY



C.R.P.No.3244 of 2023

M.NIRMAL KUMAR, J.

rsi

C.R.P.No.3244 of 2023

and

C.M.P.No.19993 of 2023

03.07.2024