



C.R.P. (PD) .No. 4019 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.10.2024

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THE HONOURABLE Mr. JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4019 of 2024

&

C.M.P.No. 22103 of 2024

R.Srinivasan

...Petitioner

Vs.

C.Sankar Kumar

...Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India against the order dated 24.07.2024 made in I.A.No.7 of 2024 in O.S.No.1059 of 2013 on the file of the III Additional District Munsif, Salem.

For Petitioner : Mr.V.Rajesh

ORDER



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This Civil Revision Petition arises at the instance of the plaintiff. He claims that he purchased the property on 19.09.1996. Thereafter, he executed a power of attorney in favour of the 1st defendant on 05.10.2007. Pleading that the holder of the power of attorney had abused his power and had executed a sale deed in favour of the defendants 2 to 6, the plaintiff presented the suit for declaration that the sale deed executed by the 1st defendant in favour of the defendants 2 to 6 is null and void and also for declaration that the power of attorney dated 05.10.2007 had been cancelled. He also sought for the relief of permanent injunction restraining the defendants from alienating the suit property.

2. The defendants entered appearance and it is their specific case that on the very date of execution of the power of attorney, i.e., 05.10.2007, the plaintiff had received the entire sale consideration and had issued sale receipts.



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3. On these pleadings, the parties went for trial. During the course of the trial, the plaintiff had been confronted with the sale receipts dated 05.10.2007. The plaintiff denied the same. Hence, the 4th defendant entered the witness box and marked the said document, which was received as Ex.B.11. Thereafter, he took out an application in I.A.No.7 of 2024, seeking for comparison of the admitted power of attorney dated 05.10.2007 marked as Ex.A.2 with the sale receipts dated 05.10.2007, marked as Ex.B.11.

4. After receipt of a counter from the plaintiff, the learned Trial Judge allowed the application with a condition that the 4th defendant pays a cost of Rs.10,000/- to the District Legal Services Authority, Salem. Hence, this revision.

5. Mr.V.Rajesh submits that the application should have been dismissed as it is delayed and further the defendants could prove the sale receipts only by way of cross examining the attesting witness. He states that the evidence of the expert would not prove the document.



Hence, he submitted that the Civil Revision Petition may be admitted and an order of interim stay granted.

6. I have carefully considered the arguments of Mr.V.Rajesh.

7. It is not in dispute that the plaintiff had executed a power of attorney on 05.10.2007. This implies that the signature on Ex.A.2, power of attorney is admitted by the plaintiff. What has been denied by the plaintiff is Ex.B.11, namely, sale receipts said to have been issued for the purchase of the property on the very same day. The plaintiff had been confronted with this document but he had denied the same. Therefore, the 4th defendant had marked the said document during the course of his evidence. Ex.A.2 and Ex.B.11 being contemporaneous in nature, signature between the two might not be different. In case, a report is filed by the expert stating that the person who has executed Ex.A.2 is not the person who had executed Ex.B.11, it would certainly go in favour of the plaintiff.



8. Insofar as the plea that the defendants should have examined the attestor to the sale receipts, the learned Trial Judge has recorded a finding that summons was taken to the attesting witnesses, served and yet they did not appear before the Court. If that be the factual scenario, then it shows that the 4th defendant had taken all the steps possible in order to prove Ex.B.11 and finally left with no other option, he has taken this application for examination of the said documents by hand writing expert. Therefore, the plea of Mr.V.Rajesh that the sale receipts might be proved only by examination of attesting witnesses does not appeal to me.

9. There is always power vested with a Court to compare the signature under Section 73 of the Indian Evidence Act, but as cautioned by the Supreme Court in ***Thiruvengada Pillai Vs. Navaneedhaammal and another – 2008 (4) SCC 530***, it is better that the Court prior to exercising the power under Section 73 of the Indian Evidence Act, gets a report of the hand writing expert.



C.R.P. (PD) .No. 4019 of 2024

WEB COPY

10. The learned Trial Judge has given cogent reasons in allowing the petition. I do not find any reason to interfere with the same. The apprehension that is expressed by Mr.V.Rajesh is that his client might not be given an opportunity to examine the expert. I am sure that if a report is submitted by the expert after comparison of Ex.A.2 and Ex.B.11, the learned Trial Judge will give sufficient opportunity to the plaintiff to cross examine the expert on the report that he might submit.

11. In the result, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

03.10.2024

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C.R.P. (PD) .No. 4019 of 2027

The III Additional District Munsif,
Salem.

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V.LAKSHMINARAYANAN, J.

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C.R.P. (PD) .No. 4019 of 2024

C.R.P. (PD) .No. 4019 of 2024

03.10.2024