



C.R.P.(PD)No.3855 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.10.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.3855 of 2024
and C.M.P.No.21151 of 2024

H.Sumathi

.. Petitioner

Vs

1.Nallammal

Arul (died)

2.Kaliammal

3.Premila

4.Parameswari

5.Selvi @ Tamilselvi

6.Muthuraman

7.P.Sathyasekaran

8.Dhanamathi

9.Manoj Kumar

10.Pavithra

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and final order dated 30.04.2024 in I.A.No.7 of 2024 in O.S.No.252 of 2016 on the file of I Additional District Munsif Court, Salem.



WEB COPY



C.R.P.(PD)No.3855 of 2024

For Petitioner : Ms.J.Prithivi

For Respondents : No appearance

ORDER

This civil revision petition is at the instance of the plaintiff. O.S.No.252 of 2016 on the file of the I Additional District Munsif Court at Salem is a suit for permanent injunction.

2. The case of the plaintiff is that she had purchased the property on 18.11.2002. Since the defendants interfered with her possession, she was constrained to present the suit. It is the case of the defendants that the plaintiff had entered into a sale agreement on 11.03.2013 and had received a sum of Rs.2,25,000/- towards the said sale agreement. Subsequently, defendants 6 & 7 demanded the plaintiff to execute the sale deed on the basis of the sale agreement dated 11.03.2013. According to the 6th defendant, pursuant to the sale agreement, the sale deed by which the plaintiff purchased the property on 18.11.2002 was also handed over to them. On the basis of these pleadings, the parties went for trial.



C.R.P.(PD)No.3855 of 2024

3. The plaintiff examined herself as P.W.1 and the 6th defendant as

D.W.1. During the course of examination, the original sale deed dated 18.11.2002 was marked on the side of the defendants. In addition, the 6th defendant also marked the sale agreement dated 11.03.2013 which the plaintiff alleged to be a forgery. As these two documents are said to have been executed by the plaintiff, she took out an application in I.A.No.7 of 2024 seeking for comparison of the signature found under the admitted sale deed dated 18.11.2002 with the sale agreement dated 11.03.2013.

4. This application was resisted by the 6th defendant pleading that the time period between the two deeds is more than a decade and therefore, the said documents cannot be compared. The submission by the 6th defendant found acceptance with the learned I Additional District Munsif at Salem who has dismissed the petition. Hence, the revision.

5. Ms.J.Prithivi relying upon the judgment of the Full Bench of the Andhra Pradesh High Court in ***Bande Siva Shankara Srinivasa Prasad v. Ravi Surya Prakash Babu and others, 2016 (2) Madras Weekly Notes (Civil) 1*** contends that it is not necessary that the signature must be contemporaneous in nature.



C.R.P.(PD)No.3855 of 2024

6. Notice had been ordered to the defendants/respondents. The respondents have been served, yet they have not entered appearance.

7. I have considered the submissions of Ms.J.Prithivi, learned counsel for the civil revision petitioner and have gone through the judgment.

8. Opinion of an expert in terms of Section 45 is a weak evidence. In fact, it is not even binding upon the Court. Where one party projects a document which is said to be under the signature of the other party, then the party who is relying upon the said document would have to prove the validity of the same.

9. In *Thiruvengada Pillai v. Navaneethammal and another*, (2008) 4 SCC 530, the Hon'ble Mr.Justice R.V.Raveendran had held that while the Court has the power to compare the signature under Section 73 of the Indian Evidence Act, 1872, it is better for the Court to procure evidence from an expert so as to come to a firm conclusion on the nature of the document.



C.R.P.(PD)No.3855 of 2024

10. On the facts of this case, it is the case of the plaintiff that she became the absolute owner in the year 2002. This document has been filed as Ex.B1. The defendants project Ex.B2 in order to defeat the claim of the plaintiff stating that by virtue of an agreement entered into in the year 2013, she had handed over the possession of the property to the defendants. If such be the case, then the validity of Ex.B2 would necessarily have to be gone into.

11. It is here that I can usefully refer to the judgment of the Full Bench of Andhra Pradesh High Court. The Full Bench while answering the reference in paragraph no.36 of the said judgment had held as follows:

“36. We accordingly answer the reference as under:

It is essentially within the judicious discretion of the Court, depending on the individual facts and circumstances of the case before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting/Signature with the admitted Handwriting/Signature under Section 45 of the Indian Evidence Act, 1872. The Court is however not barred.



from sending the disputed Handwriting/Signature for comparison to an expert merely because the time gap between the admitted Handwriting/Signature and the disputed Handwriting/Signature is long. The Court must however endeavour to impress upon the petitioning party that comparison of disputed Handwritings/Signatures with admitted Handwritings/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. That being said, there can be no hard and fast rule about this aspect and it would ultimately be for the Expert concerned to voice his conclusion as to whether the disputed Handwriting/Signature and the admitted Handwriting/Signature are capable of comparison for a viable Expert Opinion.”

This judgment makes it clear that it is finally up to the expert to give an opinion as to whether he is in a position to compare the signatures, though the documents are separated by long lapse of time. In case the document is sent to the expert and he is in a position to give an opinion on the said document, then it will certainly assist the Court at the time of final disposal. That being the situation, the Court erred in dismissing the application holding that the documents are not contemporaneous.



C.R.P.(PD)No.3855 of 2024

12. If the expert is in a position to give an opinion on the basis of

Exs.B1 and B2, just by the mere fact that they are not contemporaneous, the evidence cannot be rejected. There is always time enough for any party to cross-examine the expert as regards his opinion when it is so tendered before the Court. For the mere fact that the documents are not contemporaneous, it need not have been dismissed. This is especially since the signature under Ex.B1 is admitted by the plaintiff.

13. In the light of the above discussion, the civil revision petition stands allowed on the following terms:

(i) The order passed by the learned I Additional District Munsif at Salem in I.A.No.7 of 2024 in O.S.No.252 of 2016 dated 30.04.2024 is set aside.

(ii) The learned Judge shall appoint an Advocate Commissioner to take the documents namely, Exs.B1 and B2 and presented for an opinion of the expert at the Forensic Science Laboratory, Santhome, Chennai.

(iii) It is left to the expert to decide whether he is in a position to compare Exs.B1 & B2. If he is in a position to compare the documents and submit a report, it is open to the parties to cross-examine the said witness in order to question the credibility of the said opinion.



C.R.P.(PD)No.3855 of 2024

(iv) The costs for the appointment of an Advocate Commissioner

is fixed at Rs.10,000/- (Rupees Ten thousand only). The civil revision petitioner/plaintiff shall bear the said charge. This will be in addition to the costs that may be levied by the Forensic Science Laboratory in order to tender an opinion. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

15.10.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

I Additional District Munsif, Salem.



WEB COPY



C.R.P.(PD)No.3855 of 2024

V. LAKSHMINARAYANAN,J.

kj

C.R.P.(PD)No.3855 of 2024
and C.M.P.No.21151 of 2024

15.10.2024