



C.R.P(MD)Nos.388 and 389 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 01.07.2024

CORAM

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

**C.R.P(MD)Nos.388 and 389 of 2023
and
C.M.P(MD)Nos.1893 and 1894 of 2023**

R.Sellaperumal (Died) ... 1st petitioner / 1st plaintiff
1.R.Selvaraju ... 1st Petitioner / 2nd petitioner / 2nd plaintiff
2.Dhanalakshmi
3.Nithya
4.Ragunath
5.Chinnammal ... 2 to 5 Petitioners / 4 to 7 Petitioner / 4 to 7 Plaintiffs
(in both CRPs)

Vs

1.S.Selvaraju @ Japan Selvaraju
2.S.Suresh
3.Vennila
4.Saroja ... 1 to 4 respondents / 1 to 4 respondents /
Defendants
5.R.Govindaraju ... 5th Respondent / 3rd Petitioner / 3rd Plaintiff
(in both CRPs)



C.R.P(MD)Nos.388 and 389 of 2023

COMMON PRAYER :-

This Civil Miscellaneous Appeal is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 17.08.2022 passed in I.A.Nos.11 and 12 of 2022 in O.S.No.112 of 2016 on the file of the Sub Court, Thuraiyur.

For Petitioner : Mr.S.Vashik Ali
For R1 : Mr.J.Pooventhara Rajan
For R2 to R4 : Mr.K.Prakash
(in both CRPs)

COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal order of the Subordinate Court, Thuraiyur, dated 17.08.2022 passed in I.A.No.11 and 12 of 2022 in O.S.No.112 of 2016.

2. Heard Mr.S.Vashik Ali, learned counsel for the petitioners, Mr.J.Pooventhara Rajan, learned counsel for the first respondent and Mr.K.Prakash, learned counsel for the respondents 2 to 4 and perused the material records of this case.



WEB COPY

3. It can be seen that the suit is filed for a declaration that the sale deed dated 27.05.1998 as void. It is the specific case of the plaintiffs that they have never gone to the Sub Registrar Office, Thuraiyur, to execute the sale deed and the defendants have impersonated all the three plaintiffs as if they executed the above sale deed. According to the plaintiffs, both the signatures are forged and also the left thumb impression is also not theirs. Therefore, it is the case of the plaintiffs that the plaintiffs have to prove the same. Therefore, they made the prayers and they filed these applications however at the argument stage.

4. I.A.No.11 of 2022 was filed with a prayer to reopen the case and I.A.No.12 of 2022 was to send the documents for comparison by forensic experts with the admitted documents of the year 2014, whereunder the plaintiffs and the defendants have entered into an agreement of sale in respect of yet another property which is admittedly before the Sub Registrar, which is a registered document in which both the left thumb impression and signature are there.



C.R.P(MD)Nos.388 and 389 of 2023

5. The learned counsel for the petitioner would submit that the case of the plaintiffs itself is based on the said fact. It is crucial for them to prove the said fact. Therefore, the document has to be compared.

6. Per contra, the learned counsel appearing on behalf of the defendants would submit that when the sale deed is of the year 1998 and the suit having been filed in the year 2012 the application is filed only in the year 2022, when after 10 years, that too when the trial is completed and evidence is closed and the matter is posted for arguments. At that stage, if the suit is reopened, the defendants would be put to grave prejudice. Besides, the entire exercise is only to protract the proceedings. He would also submit that the documents which is now termed as comparable is of the year 2014 and therefore, both the documents are not contemporary and therefore are incomparable.

7. The learned counsel appearing on behalf of the other respondents would also adopt the arguments of first respondent.



C.R.P(MD)Nos.388 and 389 of 2023

WEB COPY

8. I have considered the rival submission made on either side and perused the material records of the case.

9. When the plaintiffs' specific case is that the suit sale deed is a fraudulent and forged one, then it is his bounden duty to prove the said case. Therefore, it is just and necessary that the plaintiffs have filed the application. It is true, that the plaintiffs have omitted to file the application at the appropriate stage and has filed only after the closure of the evidence. But when it comes to the balance between substantial justice and the procedural lapse, this Court would give weightage to the substantial justice, that is, the truth should come out. If the plaintiffs have not executed the document and if the same is a forgery and is a result of impersonation then that fact should be established one way or the other. Therefore, this is not a case on the ground of mere delay, the plaintiffs' application can be dismissed.

10. Eventhough the learned counsel for the respondents is right to an extent since the document to which the sale deed is sought to compared, is



C.R.P(MD)Nos.388 and 389 of 2023

only of the year 2014, as there may be variations in the signature, but both the documents also contain left thumb impressions, which will not vary over the years and therefore, the documents can be compared.

11. In view thereof, I am unable to sustain the order of the trial Court. As far as the delay is concerned, since it is because of the plaintiff's lapse, the defendants can be adequately compensated by costs. The plaintiffs are ordered to pay a sum of Rs.5,000/- to the defendants. In view thereof, the Civil Revision Petitions are allowed on the following terms:

i) the order dated 17.08.2022 in I.A.Nos.11 and 12 of 2022 in O.S.No. 112 of 2016 shall stand set aside. The said applications stands allowed and the trial Court is directed to appoint an advocate commissioner to carry out the exercise of taking the documents and comparing it with the aid of the forensic experts and to file a report before the trial court. The same can be done as expeditiously as possible.

ii) If the plaintiff does not pay the costs of Rs.5,000/-(Rupees Five Thousand only) on or before 12.07.2024 and file a memo before the trial



C.R.P(MD)Nos.388 and 389 of 2023

Court, these Civil Revision Petitions will be deemed to be dismissed and the trial Court can proceed with the case further. Consequently, connected miscellaneous petitions stand closed. No costs.

01.07.2024

NCC: Yes / No
Index: Yes / No
Internet : Yes / No

pnn

To

- 1.The Subordinate Judge, Thuraiyur.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(MD)Nos.388 and 389 of 2023

D.BHARATHA CHAKRAVARTHY, J.

pnn

**C.R.P(MD)Nos.388 and 389 of 2023
and
C.M.P(MD)Nos.1893 and 1894 of 2023**

01.07.2024