



C.R.P. (MD) No. 535 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 535 of 2023

and

C.M.P. (MD) No.2575 of 2023

Kali

... Petitioner/

9th Respondent

-VS-

1.Krishnan
through his Wife and Power Agent
K.Latha

... ^{1st} Respondent/^{1st} Appellant

2.Jeyaraman

... ^{2nd} Respondent/^{1st} Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 10.10.2022 made in I.A.No.1 of 2022 in A.S.No.107 of 2017 on the file of the Sub-Court, Sivagangai.

For Petitioner : Mr.R.Rajesh Kumar

For Respondents : Mr.L.Siva for R2

No appearance for R1



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ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 10.10.2022 made in I.A.No.1 of 2022 in A.S.No.107 of 2017.

2. The suit in O.S.No.50 of 2011 was filed for partition. The suit was dismissed. In the suit, it is the contention of the first defendant that the fifth defendant has already executed a sale-deed in his favour. The fifth defendant filed the written statement stating that he never executed the sale-deed and the sale-deed is a concocted document. During the pendency of the suit, the plaintiff in the suit had filed an interlocutory application to appoint an Advocate Commissioner to send the contentious sale-deed for verification and forensic examination to compare the signature and the left thumb impression of the fifth defendant with the other admitted signatures. The said application was dismissed. The Civil Revision Petition filed against the same was also dismissed. At that stage, the fifth defendant file another application for the very same relief. The said application was also dismissed. As against which, the Civil Revision Petition was filed before this court in C.R.P (MD) No.1600 of 2017. Pending the same, the suit itself was decreed and when the matter came up for final disposal, this Court had closed the Civil Revision Petition with



liberty to the petitioner therein to file a similar application at the appellate stage.

3. Thereafter, when the present Appeal suit in A.S.No.107 of 2017 is filed, the petitioners upon being impleaded as the legal heirs of the deceased fifth defendant, had moved the present application which is now dismissed by the lower Appellate Court against which the Civil Revision Petition is filed.

4. Mr.R.Rajesh Kumar, the learned Counsel appearing on behalf the petitioner would submit that it is the specific case of the fifth defendant that he never executed the sale-deed in question. A mere comparison of the signature as well as the left thumb impression with the other admitted documents, especially, when the fifth defendant has executed the other sale-deeds also, the truth will come out. Earlier, the plaintiff filed the application, the same was dismissed. When the fifth defendant's application was also dismissed and the civil revision petition was pending, since there was no interim order, the suit itself was proceeded and liberty was given by this Court to move the appellate Court. The present application ought to have been considered by the Appellate Court.



5. Per Contra, Mr.L.Siva, the learned counsel appearing on behalf of the second respondent, who is the first defendant in the suit in whose favour the sale-deed is executed would submit that the very contention of the plaintiff as well as the defendant is that the properties are their ancestral properties and therefore, the sale is not valid. The contention of the first different is that already a partition has happened and the properties were allotted to the share of the fifth defendant and he has executed the sale-deed and therefore, the sale-deed is valid. Therefore, the issue is something different and the signature and the left thumb impression are not very relevant to the issue on hand. When the petition has already been dismissed by the Trial Court and the same has attained finality, the application cannot be moved in the appellate stage.

6. I have considered the rival submissions made on either side and perused the material records of the case. To an extent, the learned counsel for the respondent is right by contending that in this case, whether at all the fifth defendant had the authority to execute the sale-deed, as the properties are contended to be the ancestral property is one of the questions. But, that does not by itself resolve the entire issue. Even if the parties are able to succeed that it is the ancestral property, still the sale-deed will be valid as far as the share of the fifth defendant is concerned. Therefore, when the fifth defendant has denied



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his signature in the sale-deed and has contended that the entire document is concocted, the truth or otherwise has to be ascertained. Originally when the plaintiff filed the application, naturally, the Court would reject the same because the onus is on the person, who asserts that his signature in a particular document is not his or her own to file such application and to send it for comparison. In that view of the matter, when his turn came, the original fifth defendant had rightly filed the application. However, when the same was rejected and the civil revision petition was pending, the suit itself got over. However, this Court had given a liberty to move the application at the appellate stage. Upon being impleaded as the legal heir, the petitioner had moved the application. The contentious sale-deed is dated 27.06.1997 and the fifth defendant has admittedly executed another sale-deed dated 29.03.2004, which is marked as Ex.B1. Therefore, when the said document is available and since, both documents contain left thumb impression, the same can be compared by the Forensic Expert and the same can be received as an additional evidence by the Appellate Court subject to the objections and the contentions of the other contesting parties.

7. In view thereof, the Civil Revision Petition is allowed on the following terms:-



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(i) The order of the Subordinate Court, Sivagangai, dated 10.10.2022, in I.A.No.1 of 2022 in A.S.No.107 of 2017 is set aside:

(ii) The learned Subordinate Judge, Sivagangai, is requested to appoint an Advocate Commissioner and entrust the above said two documents to him to get it compared with the Regional Forensic Laboratory, Madurai and after getting expert opinion, submit the same before the court. The Trial Court is entitled to pass the other procedural directions and also fix the remuneration, which shall be borne by the petitioner herein;

(iii) The exercise shall be carried out by the Advocate Commissioner as expeditiously as possible;

(iv) A copy of this order shall also be brought to the notice of the appropriate laboratory, so that they can also expedite the process of comparing and rendering the report. Depending on the ultimate report, the contentions of the parties are left open to take such steps before the First Appellate Court as may be permissible under law.



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Consequently, the connected Miscellaneous Petition is closed. No costs.

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NCC : Yes/No

PKN

To

1. The Subordinate Court, Sivagangai.



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D.BHARATHA CHAKRAVARTHY, J.

PKN

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