



C.R.P(MD).No.1729 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.12.2023

Delivered on : 01.03.2024

CORAM

**THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P(MD).No.1729 of 2023

Sevugan (died)

1.Arumugam

2.Santhi

3.Chandra

4.Selvakumar : Petitioners/Petitioners/Plaintiffs

Vs.

Chinnathambi : Respondent/Respondent/Defendant

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order, dated 23.06.2023 passed in I.A.No.8 of 2023 in O.S.No.145 of 2014 on the file of the learned District Munsif, Devakottai and set aside the same.

For Petitioners : Mr.J.Anandkumar

For Respondent : No Appearance



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## **ORDER**

The Civil Revision Petition is directed against the order passed in I.A.No.8 of 2023 in O.S.No.145 of 2014, dated 23.06.2023 on the file of the learned District Munsif, Devakottai, dismissing the petition filed under Order 26 Rule 10 (A) of the Code of Civil Procedure.

2. The revision petitioners/plaintiffs have filed the above suit originally claiming permanent injunction restraining the respondents/defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. The case of the plaintiffs is that the suit properties and other properties are joint family properties of the plaintiffs and the defendant; that the plaintiffs and the defendant have entered into a partition and executed a partition note on 15.05.1975; that the suit properties, which were allotted to the plaintiffs have been in possession and enjoyment of the plaintiffs and that since the defendant has attempted to trespass into the suit properties, the plaintiffs were constrained to file the above suit.



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4. The defendant has filed the written statement taking a stand that the suit property is his absolute and separate property; that he has purchased the suit property for valuable consideration vide sale deed, dated 06.01.1971; that the defendant has never entered into any partition nor executed any partition note; that the defendant has been in possession and enjoyment of the suit property and that therefore, the plaintiffs have no cause of action and the suit is liable to be dismissed.

5. It is evident from the records that taking note of the defence taken by the defendant, the plaintiffs have amended the plaint and added the prayer for declaration that the suit property is belonging to them.

6. When the suit was in part-heard stage, the plaintiffs have filed the above petition in I.A.No.8 of 2023 under Order 26 Rule 10(A) of the Code of Civil Procedure, seeking orders to appoint an Advocate Commissioner for taking the original partition note, dated 15.05.1975 along with vakalat and written statement filed by the defendant and produce the same before the handwriting expert of Tamil Nadu Forensic Science Department, Madurai and to get a report.



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7. The respondent/defendant has filed a counter statement raising objections. The learned District Munsif, after enquiry, has passed the impugned order, dated 23.06.2023, dismissing the said petition. Aggrieved by the order of dismissal, the plaintiffs have preferred the present revision.

8. The case of the revision petitioners/plaintiffs is that the respondent/defendant in his written statement has specifically disputed the signature found in the partition note, dated 15.05.1975 and that in order to prove that the signature found in the partition note, dated 15.05.1975 is that of the defendant and to prove the said document, it has become just and necessary to send the document in question along with documents containing admitted signatures for comparison and report.

9. The defence of the respondent/defendant is that the plaintiffs side have already examined four witnesses and after taking time for examining the fifth witness, they have filed the above application; that the plaintiffs, filing petition after petition, have been protracting the proceedings; that the defendant has therefore approached the High Court in C.R.P(PD)(MD) No.2534 of 2022, seeking speedy disposal of the case and this Court vide



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order, dated 20.01.2023 has directed the trial Court to complete the trial and dispose of the suit within a period of five months; that the plaintiffs even after the specific direction have been protracting the proceedings and that since the above petition is abuse of process of law, the same is liable to be dismissed.

10. As already pointed out, it is the specific case of the plaintiffs that the suit properties and other properties are their joint family properties and that they have entered into a partition and on that basis, partition note, dated 15.05.1975 came to be executed and wherein, the suit property was allotted to the share of the plaintiffs. But according to the defendant, the suit property was purchased by him vide sale deed, dated 06.01.1971 and the same is his absolute and separate property and that the plaintiff have no right, title or interest over the suit property.

11. No doubt, the defendant in his written statement has specifically disputed the partition that was allegedly entered into between the plaintiffs and the defendant and the execution of partition note. As rightly pointed out by the learned counsel for the respondent, the suit was filed in the year 2014 and the written statement was filed on 01.09.2015, but the above petition came to be filed in 2023, after the lapse of eight years, since the filing of



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written statement. More importantly, the plaintiffs have already examined four witnesses and after taking adjournment for examining the fifth witness, they have filed the above petition.

12. The learned counsel for the revision petitioners would submit that the trial Court, by observing that the plaintiffs have not filed any contemporaneous document relating to the period of partition note, dated 15.05.1975 for comparison and that the signatures found in vakalat and written statement cannot be taken as assured standard documents, dismissed the petition.

13. No doubt, the learned trial Judge has referred the judgment of this Court in the case of *C.Gunaseelan Vs. Vijayakumar and another* reported in **CDJ 2018 MHC 1769**, wherein this Court has held that only the signatures within three years of disputed signatures can be compared for giving opinion. At this juncture, it is necessary to refer the Full Bench Judgment of the Hyderabad High Court in *Bande Siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu and others* reported in **2016 (2) MWN (Civil) 1**, and the relevant paragraphs are extracted hereunder:



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*“We accordingly answer the reference as under :*

*It is essentially within the judicious discretion of the Court, depending on the individuals facts and circumstances of the case before it, to seek or not to seek Expert Opinion as before it, to seek or not to seek Expert Opinion as to the comparison of the disputed Handwriting / Signature with 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 Handwriting / 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 fact 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. The view expressed by the Division bench in Janachaitanya House Ltd. Vs. Divya Financiers, 2002 (3) ALT 409 (DB), as to the stage of the proceedings when an application can be moved by a party under Section 45 of the Indian Evidence Act, 1872, continues to hold the field and there is no necessity for this Full Bench to address that issue”.*



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14. This Court in the case of ***Chinnadurai Vs. Akkumari (C.R.P(PD) (MD)No.76 of 2021 dated 08.06.2021***) by following the Full Bench judgment of the Hyderabad High Court has observed as follows:

*“12.Admittedly, neither any provision of law nor any rule mandates that the time gap between the admitted and the disputed documents must be within three years. As rightly observed by the Hyderabad High Court, it is for the expert to decide as to whether the admitted and disputed documents are capable of comparison for a viable expert opinion. In the case on hand, as already pointed out, the time gap is about three years and 8 months and as such, it is only for the expert to decide about the capability of comparison.”*

15. But in the case on hand, the disputed document i.e., partition note is dated 15.05.1975 and whereas the vakalat and written statement were filed in the year 2015 and there is a time gap of nearly 40 years. As rightly pointed out by the learned counsel for the respondent, the petitioners/plaintiffs have sought to compare the disputed signature with the admitted signatures found in the vakalat and written statement filed by the respondent/defendant. The learned trial Judge has rightly referred the decision of ***Andra Pradesh High Court in Byalla Devadas Vs. Sivapuram Rama Yogeswara Rao in C.R.P.***



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**No.67 of 2022, dated 16.03.2022**, wherein the Andra Pradesh High Court has specifically observed that the signature in a disputed document cannot be compared with the signatures on vakalat and written statement as these are not assured standard documents.

16. It is pertinent to note that the respondent/defendant has filed a revision in C.R.P(PD)(MD)No.2534 of 2022, seeking speedy disposal of the case and this Court vide order, dated 20.01.2023 has directed the trial Court to dispose of the suit within a period of five months from the date of receipt of copy of that order.

17. As already pointed out, the plaintiffs have already examined four witnesses and after taking adjournment for examining another witness, the present application came to be filed. At this juncture, it is necessary to refer the Full Bench judgment of the Hon'ble Supreme Court in ***Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy (Dead) through Legal Representatives and another*** reported in **2019 (14) SCC 220**, wherein, the Hon'ble Apex Court has referred to the decision of the Constitution Bench in ***Shashi Kumar Banerjee Vs. Subodh Kumar Banerjee*** reported in **AIR 1964 SC 529** and the relevant passages are extracted hereunder:



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*“6. In any case, to satisfy our conscience, we have gone through the evidence of PWs 1, 2, and 3. As rightly observed by the Trial Court, there is no reason to disbelieve these witnesses, whose evidence is consistent, cogent, and reliable. Though they were subjected to lengthy cross-examination, nothing noteworthy has been brought out from their deposition to discard their evidence. Thus, the evidence of PWs 1, 2, and 3 fully supports the case of the plaintiff and in our considered opinion, the High Court was not justified in rejecting their evidence.*

*7. As mentioned supra, the High Court mainly relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the agreement of sale Ext. A-1 did not tally with his admitted signatures.*

*8. By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra and Ram Bharosey v. State of Uttar Pradesh, AIR 1957 SC 381, Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1964 SC 529, Magan Bihari Lal v. State*



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*of Punjab, (1977) 2 SCC 210, and S. Gopal Reddy v. State of Andhra Pradesh, (1996) 4 SCC 596.*

We may particularly refer to the decision of the Constitution Bench of this Court in Shashi Kumar Banerjee (supra), where it was observed that the evidence of a handwriting expert can rarely be given precedence over substantive evidence. In the said case, the Court chose to disregard the testimony of the handwriting expert as to the disputed signature of the testator of a Will, finding such evidence to be inconclusive. The Court instead relied on the clear testimony of the two attesting witnesses as well as the circumstances surrounding the execution of the Will.”

18. In the above decision, the Hon'ble Apex Court has reiterated the settled legal position that expert evidence is a weak piece of evidence and not substantive in nature and it will not be safe to solely rely upon such evidence and the Court has to seek independent and reliable corroboration in the facts of a given case and that expert opinion as to a fact is not regarded as a conclusive proof of it. As rightly contended by the learned counsel appearing for the respondent, even assuming that an expert opinion is received, that opinion of the expert or the opinion formed by the learned trial Judge himself under Section 73 of the Indian Evidence Act after comparison, can only be used to corroborate the other substantive evidence available in this case and no finding can be recorded, only on the basis of those opinions.

19. On considering the entire facts and circumstances of the case, this



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Court has no hesitation to hold that the above petition came to be filed with sole intention to drag on the proceedings. Hence, the impugned order dismissing the petition filed under Order 26 Rule 10 (A) of the Code of Civil Procedure cannot be found fault with. Consequently, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

20. In the result, the Civil Revision Petition is dismissed. Since the suit is pending from 2014, the trial Court is directed to proceed with the trial and dispose of the suit within a period of three months from the date of receipt of copy of this order. No costs.

**01.03.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
das

To

1.The District Munsif, Devakottai.



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2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

**K.MURALI SHANKAR, J.**

DAS



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Pre-delivery order made in  
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01.03.2024