



C.R.P(MD)No.2397 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2397 of 2018
and
C.M.P(MD)No.10711 of 2018

K.Muthukumar

... Petitioner/Plaintiff

Vs.

V.Gopal (Died)

... Respondent/Defendant

2.V.Kunjaram

3.G.Manimuthu

4.G.Manimegalai

5.G.Manimozhi @ Kanimozhi

... Respondents 2 to 5

(Respondents 2 to 5 are brought on record as LR's of the deceased sole respondent vide Court order, dated 09.07.2024 made in C.M.P(MD)Nos.5184, 5186 and 5187 of 2024 in C.R.P(MD)No.2397 of 2018)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 01.09.2018 passed in I.A.No.178 of 2017 in O.S.No.56 of 2014 on the file of the District Munsif, Sivagangai.



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For Petitioner : Mr.C.Jawahar Ravindran

R-1 : Died

For R-2, R-4 &
R-5 : No appearance

For R-3 : Mr.K.C.Ramalingam

ORDER

The plaintiff in a suit for declaration of title and permanent injunction is the revision petitioner herein. The present revision petition has been filed challenging the dismissal of an application for referring a sale deed for expert opinion.

2. The plaintiff had filed the above said suit for the relief of declaration of title and permanent injunction on the ground that, the property has been settled by his father in his name, dated 22.11.2013.

3. The defendants have filed a written statement contending that even before the settlement was executed, the father and brother of the plaintiff have sold the suit schedule property in favour of the sole defendant by a sale deed, dated 17.08.1990.



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4. Alleging that the sale deed, dated 17.08.1990 is a forged document, the plaintiff had filed I.A.No.178 of 2017 to send the said document for expert opinion to compare the signature of his father and brother found in the said document. The said application was dismissed by the Trial Court on 27.07.2017 on the ground that the plaintiff has not produced any admitted document to compare the same with the sale deed, dated 17.08.1990. Challenging the said order, the plaintiff had filed C.R.P(PD)(MD)No.1754 of 2017 before this Court. This Court by an order, dated 13.10.2017 had set aside this order and granted liberty to the plaintiff to summon the registration authorities to mark the sale deed, dated 17.08.1990 available in the office of the Joint Sub Registrar No.II, Sivagangai.

5. In compliance with the said orders of this Court, the plaintiff had filed I.A.No.1120 of 2017 to summon the sale deed, dated 17.08.1990. According to the plaintiff, the said application was allowed and the document has been summoned before the Court. Thereafter, the present impugned order has been passed by the Trial Court on 01.09.2018 again rejecting the application for expert opinion on the ground that the signature found in the sale deed, dated 17.08.1990 could



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not be compared with the signature found in the settlement deed, dated 22.11.2013 on the ground that there is a huge time gap of 23 years.

Challenging the said order, the present revision petition has been filed by the plaintiff.

6. According to the learned Counsel appearing for the plaintiff, he has sought for comparison of the thumb impression alone and not the signature of his father and brother found in the sale deed, dated 17.08.1990. The Court has erroneously understood the prayer that the plaintiff is seeking comparison of signatures. Only if the signatures are sought to be compared, contemporaneous document have to be looked into. In all cases where comparison of thumb impressions are sought for, the time gap would not be an impediment for considering the same on merits.

7. Per contra, the learned Counsel for the third respondent herein has strenuously contended that the original prayer in I.A.No.178 of 2017 is only for comparison of signature and not for comparison of thumb impressions.



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9. The plaintiff has specifically contended that his father and brother have not executed a sale deed, dated 17.08.1990 in favour of the defendant and it is a forged document. Therefore, the entire burden is upon the plaintiff to establish that the said document is a forged document. The plaintiff claims title under a settlement deed executed by his father on 22.11.2013 and the said document has already been placed before the Court. The sale deed, dated 17.08.1990 has also been brought before the Court by way of the orders passed in I.A.No.1120 of 2017.

10. A perusal of the preamble to the order passed by the Trial Court on 01.09.2018 in I.A.No.178 of 2017 reveals that the plaintiff has sought for comparison of thumb impression alone and not the signature of his father and brother. The Trial Court has erroneously understood the said application and has proceeded to reject it on the ground that the documents, dated 17.08.1990 and 22.11.2013 cannot be compared in view of the time gap of 23 years and the documents are not



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contemporaneous in nature.

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11. Since the thumb impression alone is sought to be compared, contemporaneous documents need not be produced. Therefore, the order of the Trial Court, dated 01.09.2018 in I.A.No.178 of 2017 is hereby set aside and the said application stands allowed. The thumb impression of the plaintiff's father and brother found in the sale deed, dated 17.08.1990 shall be compared with the thumb impression of the plaintiff's father and brother found in settlement deed, dated 22.11.2013.

12. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

24.07.2024

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



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To

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1. The District Munsif,
Sivagangai.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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24.07.2024