



C.R.P.(MD)No.3045 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.11.2023

PRONOUNCED ON:09.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3045 of 2023

and

C.M.P.(MD)No.15670 of 2023

Andal(died)

- 1.Kamala
- 2.Rajaguru
- 3.Gopal Swamy
- 4.Selvaraj
- 5.Naranammal

: Petitioners/Petitioners 2 to 5/
Plaintiffs 2 to 5

(The 1st and 4th petitioners through
their power agent of 2nd petitioner)

Vs.

- 1.R.Umakanth
- 2.The Branch Manager,
State Bank of India,
Velayutham Road,
Sivakasi.

3.S.Alagendran : Respondents/Respondents/
Defendants



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PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreeal order dated 20.07.2023, passed in I.A.No.6 of 2023 in O.S.No.65 of 2018, on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur.

For Petitioners : Mr.M.Digvijayapandian

For Respondents : Mr.Ajmal Khan
Senior Counsel
for Mr.V.George Raja
Caveator for R.1

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.6 of 2023 in O.S.No.65 of 2018, dated 20.07.2023, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, in dismissing the petition filed under Order 26 Rule 10(A) of the Code of Civil Procedure.

2. The revision petitioners as plaintiffs have filed the suit to declare that the suit property is belonging to them and for consequential relief of recovery of possession. Admittedly the first plaintiff is the



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mother of the plaintiffs 2 to 6. The defendants have filed written statements separately and are defending the suit. Pending suit, the first plaintiff had died.

3. Pending trial, the plaintiffs have filed an application in I.A.No.6 of 2023 under Order 26 Rule 10(A) C.P.C., seeking orders to appoint an Advocate Commissioner for taking the original registered sale deed dated 18.09.1967 along with the documents containing admitted signatures and produce the same before the handwriting expert of the Tamil Nadu Forensic Department, Madurai and to obtain a report. The first respondent / first defendant has filed counter statement raising serious objections. The learned Principal District Judge, after enquiry, has passed the impugned order dated 20.07.2023 dismissing the petition. Aggrieved by the order of dismissal, the plaintiffs have come forward with the present revision.

4. The case of the revision petitioners / plaintiffs is that the suit property and other properties were originally owned by Seenivasa Naickar, S/o Ramasamy Naickar, who is the husband of the first plaintiff and the father of the plaintiffs 2 to 6, that the said Seenivasa Naickar had



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died on 26.01.2006 leaving behind the plaintiffs as his legal heirs, that the plaintiffs through encumbrance certificates came to know that the first defendant had obtained loan from the second defendant and for the said borrowal, the suit property had been mortgaged to the second defendant by the first defendant, that the plaintiffs have then sent a legal notice to the defendants, for which the first defendant has sent a reply notice with false and vexatious averments, that the first defendant had alleged that the suit property originally belonged to Seenivasan, S/o Gopalsamy Naickar and Seenivasan, S/o Ramasamy Naickar and both of them jointly executed a registered sale deed on 18.09.1967 in favour of Vaikunda raman Nadar, Rathinasamy Nadar, Sundar raj Nadar and Sangana Nadar for valuable consideration and after purchase, they were alone in continuous possession and enjoyment of the suit property, that the plaintiffs subsequently came to know that the signatures of G.R. Seenivasan found in the sale deed dated 18.09.1967 are not that of their father Seenivasan, that they have impersonated and fabricated and fraudulently created the document and that therefore, they were constrained to file the above suit to declare their title to the suit property and for their possession.



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5. The defence of the first defendant is that the suit property and several other properties were owned by Srinivasa Naicker, S/o Ramasamy Naicker, that the said G.R.Srinivasa Naidu and another Seenivasan, son of Koppini Gopalsamy had jointly sold the suit land on 18.09.1967 in favour of Vaikunda raman Nadar, Rathinasamy Nadar, Sundar raj Nadar and Sangana Nadar of Sivakasi, who had been carrying on the business of manufacture of fireworks in partnership in the name and style of M/s The Rathna Fireworks Factory even earlier to 1967, that the said purchasers had thrown the suit land into common pool of partnership, that the said Seenivasan had sold few other lands to the above Vaigundarama Nadar and 3 others, that the plaintiffs had not whispered anything about their possession and enjoyment of their property since 1967 till the filing of the suit, that the plaintiffs have no cause of action to the suit and that therefore, the suit is liable to be dismissed.

6. It is not in dispute that the plaintiffs have filed a petition in I.A.No.5 of 2022 seeking orders directing the second defendant Bank to produce the original title deed dated 18.09.1967 which is in their custody



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before the trial Court and despite objections raised by the defendants 1 and 2, the petition was ordered.

7. The plaintiffs now by alleging that the signatures found in the sale deed dated 18.09.1967 marked as Ex.A.14 are not that of the signature of their father Seenivasa Naickar and for proving the same, the said original document has to be sent to the expert along with the documents containing the admitted signature of Seenivasa Naickar for comparison and to get opinion, has filed the above application for appointment of Advocate Commissioner for taking the documents to the expert.

8. As rightly pointed out by the learned Counsel for the first respondent, in the plaint itself, the plaintiffs have alleged that the alleged signature of G.R.Seenivasan in the sale deed dated 18.09.1967 is not his signature and it was impersonated by the first defendant and it was fully fabricated and fraudulently created. Even according to the plaintiffs, they have raised the above allegations, after seeing the copy of the sale deed obtained from the Sub Registrar Office. The first defendant, in his written statement itself, has stated that the plaint document No.7, now



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marked as Ex.A.14 is only a SRO copy, which does not at all contain the signatures of Seenivasan Naickar at any place, that the plaintiffs by comparing the admitted signatures of their father along with the SRO copy of the sale deed, dated 18.09.1967, they have taken a stand that the signatures found in the SRO copy are not that of their father.

9. It is the further contention of the first defendant that the said Seenivasan Naickar executed another sale deed dated 25.11.1968 in favour of the purchasers under the sale deed dated 18.09.1967 and he joined with his father and executed the sale deed dated 15.05.1974 with regard to the other properties, that in all the above referred sale deeds, one of the attestors was the Village Munsif of Narayanapuram Village, that the sale deed dated 15.05.1974 was executed by Seenivasan Naickar along with his father Ramachandran, who represented himself, his minor children and his brother and that the said Seenivasan never questioned the sale transaction dated 18.09.1967 till his death in 2006.

10. The learned District Judge, by observing that the impugned sale deed is dated 18.09.1967 and the plaintiffs wanted to compare with the admitted mortgage deeds dated 04.07.1977 and 14.12.1978 on the file



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of SRO, Sivakasi and that since the above referred mortgage documents are not related to the contemporaneous period of the sale deed dated 18.09.1967, the same cannot be utilised for comparison and on that basis also, dismissed the petition. It is pertinent to note that there is no straightjacket formula for deciding what is contemporaneous signature and it is only for the expert to decide about the same.

11. The learned counsel appearing for the revision petitioner has relied on 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:

“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



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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 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. 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”.

12 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:



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“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.”

13. Considering the above, the contention of the respondent/defendant and the decision of the trial Court are not proper and the same cannot be sustained. But as rightly pointed out by the learned Counsel for the respondent and rightly observed by the learned trial Judge, the suit was filed in the year 2018 and the written statement came to be filed on 04.10.2018, the present petition came to be filed only in 2023, ie., more than 5 years after the filing of the suit. More importantly, when the trial was in part heard stage, the above petition came to be filed.

14. As rightly contended by the learned Counsel for the respondent, though the plaintiffs in their plaint itself, have disputed the



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signatures of the deceased Seenivasan Naickar in the sale deed dated 18.09.1967 and when the allegations of the plaintiffs were specifically refuted by the first defendant in his written statement filed on 04.10.2018, the plaintiffs have not chosen to take any steps for sending the disputed documents containing the signature of Seenivasan Naickar along with the documents containing admitted signatures. The plaintiffs have not offered any reason or explanation for not taking steps to send the documents for expert opinion, earlier.

15. 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 also 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:

“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



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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



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v. Subodh Kumar Banerjee, AIR 1964 SC 529, Magan Bihari Lal v. State 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.”

16. 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



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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.

17. Considering the entire facts and circumstances, this Court has no hesitation to hold that that the above petition came to be filed with sole intention to protract the proceedings. Hence, the impugned order dismissing the petition filed under 26 Rule 10(A) C.P.C., cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

18. In the result, this Civil Revision Petition is dismissed and the impugned order passed in I.A.No.6 of 2023 in O.S.No.65 of 2018, dated 20.07.2023, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur stands confirmed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs. Since the suit is pending from 2018 onwards, the learned Principal



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District Judge, Virudhunagar District at Srivilliputtur is directed to complete the trial and dispose of the suit within a period of four months from the date of receipt of a copy of this order.

09.02.2024

NCC : Yes : No
Index : Yes : No
Internet : Yes : No
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To

1. The Principal District Court,
Virudhunagar District at Srivilliputtur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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