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C.R.P.No.2971 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

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THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2971 of 2021
and C.M.P.No.21224 of 2021

K.Chinnappan

... Petitioner

-Vs-

M.R.Natarajan (Deceased)

1.R.Thangavel

2.Vijairani

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 01.10.2021 made in I.A.No.03 of 2019 in O.S.No.1798 of 2015 on the file of the III Additional District Munsif, Coimbatore.

For Petitioner : Mr.C.Munusamy
For Respondents : Ms.Adhishree Manoharan

ORDER

This Civil Revision Petition challenges the order of the learned III Additional District Munsif, Coimbatore in I.A.No.3 of 2019 in O.S.No.1798 of 2015 dated 01.10.2021.

2. The civil revision petitioner is the plaintiff in the suit. The first defendant is his blood brother. The third defendant is his sister and the second



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defendant is the husband of the third defendant and the brother-in-law of the plaintiff. The relationship amongst the parties not in dispute.

3. The plaintiff claims that he was working as a Conductor in the Tamil Nadu State Transport Corporation and retired in 2008. He pleads that he planned to purchase the property at Ganapathi in Coimbatore. Being a government servant, he decided to purchase the property in the name of the first defendant. The first defendant was then working in Kuwait. According to the plaintiff, he had paid all the dues for the property and a possession certificate was given by the Housing Board in his favour. He had taken possession of the property on 13.02.1997. Ever since he had been residing in the property. The plaintiff averred that he had been paying monthly installments for the property, though the document stands, in the name of the first defendant. The plaintiff further alleged that the mother of the first plaintiff and defendants 1 and 3, one Pappammal was residing with him till she passed away on 20.12.2015.

4. The cause of action for the suit was that the defendants 2 and 3 started interfering with the possession of the plaintiff. He also informed the first defendant about the same, but the first defendant, instead of supporting him, joined hands with the defendants 2 and 3. Hence the suit. Summons were served and defendants 2 and 3 filed written statement which was adopted by the



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first defendant.

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5. The primary plea of the defendants 2 and 3 is that the plaintiff neither had the monetary capacity nor the income that was necessary to purchase the High Income Group plot which costed about Rs.7,45,700/- even in 1997. They further pointed out that the first defendant had paid the equated monthly instalments and had foreclosed the loan that had been taken to purchase the property from State Bank of India, Ganapathi Branch, Coimbatore. The foreclosure took place as early as on 11.01.2006. In effect, their plea was that the plaintiff had not paid even a single pie to purchase the property, and it was the first defendant who had purchased the same.

6. After the Vakalat was filed in the case on 21.09.2015, the first defendant went to meet his maker on 03.01.2016. Three years after the death of the first defendant, the plaintiff filed an application and that too in the fag end of 2019 pleading that the Vakalat filed by the first defendant has to be sent for forensic examination. He wanted the signature in the Vakalat to be compared along with Ex.A.18 and A.19 viz., the power of attorney given by the first defendant in favour of the plaintiff.

7. The respondents / defendants 2 and 3 resisted the application saying



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that the documents sought to be compared is not contemporaneous with Ex.A.18 and Ex.A19. This plea was accepted by the trial Court. The application came to be dismissed. Challenging the same, the present revision.

8. I heard Mr.C.Munusamy for the civil revision petitioner and Ms.Adhishree Manoharan for the respondents.

9. Mr.Munusamy vehemently contended that the Vakalat filed by the first defendant had been forged by the defendants 2 and 3 and that the same would come to light if the said Vakalat is compared with the admitted signatures of the first defendant as found in Ex.A18 and A19. He states perjury is a serious offence and it ought to be investigated by the Court.

10. Per contra, Ms.Adhishree Manoharan produced the passport of the first defendant to plead that during the relevant time he was in Coimbatore and it was he who had executed the Vakalat.

11. I have carefully considered the submissions made by both sides and have perused the materials placed on record.

12. Whether the Vakalat was executed by the first defendant or not is not an issue in the suit. The main issue in the suit is whether the plaintiff had



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13. In terms of Order XXVI Rule 9 of Code of Civil Procedure, an advocate commissioner can be appointed for 'eliciting any matter in issue in the suit'. Whether the Vakalat had been executed by the first defendant is obviously not the subject matter of the suit.

14. Insofar as the reason given by the learned Judge, I should only recollect the **Full Bench judgment of the Andhra Pradesh High Court in "Bande Shiva Shankara Srinivasa Prasad -vs- Ravi Surya Prakash Babu (AIR 2016 AP 118)** wherein it was held that merely because the documents are not contemporaneous does not mean it cannot be taken up for comparison. It is



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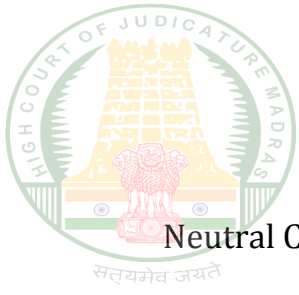
finally a call that has to be taken by the expert as to whether he is in a position to compare the signatures or not. It only makes the expert's tasks easier if the documents are contemporaneous. Merely because a document is not contemporaneous does not mean the document cannot be compared.

15. Apart from that, the learned Judge had before him two documents viz., the cancellation of power of attorney executed in the year 1997 in favour of the plaintiff, and the power of attorney executed by the first defendant in favour of defendants 2 and 3. If the need had arisen, the learned Judge could have sent the documents for comparison along with the aforesaid two documents. I should add, the above discussion is academic. It is only for the purpose of the learned trial Judge to appreciate that it is not essential that at all points of time a document has to be contemporaneous for the purpose of comparison.

16. Be that as it may, the core issue being that the execution of Vakalat not being the subject matter of issue, the application under Order XXVI Rule 9 for sending the documents for forensic opinion is not maintainable. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No



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Neutral Citation : Yes/No

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To

The III Additional District Munsif,
Coimbatore.



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V. LAKSHMINARAYANAN, J.

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