



C.R.P.No.4948 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4948 of 2024
and CMP.No.27844 of 2024

1.A.R.Balraj
2.M.Jayalakshmi
3.J.P.Sathya
4.J.P.Abinaya
5.J.P.Jayasutha

.. Petitioners

Versus

1.R.Ramani
2.R.Valarmathi
3.R.Nithya

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 19.10.2024 made in I.A.No.8 of 2024 in O.S.No.157 of 2019 on the file of the District Munsif Court, Anthiyur.

For Petitioners : Mr.D.Lakshmipathy

For Respondents : Mr.S.Bharanidharan



C.R.P.No.4948 of 2024

ORDER

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This Civil Revision Petition challenges the order passed by the learned District Munsif at Anthiyur in I.A.No.8 of 2024 in O.S.No.157 of 2019 dated 1910.2024.

2.The civil revision petitioners are the plaintiffs in the suit. They presented O.S.No.213 of 2017 on the file of the District Munsif Court at Bhavani seeking for the following reliefs:

- a) declaring the General Power of Attorney deed dated 24.10.2008 as null and void;
- b) declaring the sale deed dated 29.10.2008 as null and void;
- c) declaring the mortgage deed dated 29.10.2008 as null and void;
- d) permanently restraining the defendants from in any way encumbering or alienating the suit properties in favour of third parties till the disposal of the suit.

3.Subsequently due to bifurcation of jurisdiction, the suit stood transferred to the file of the District Munsif Court at Anthiyur and was re-numbered as O.S.No.157 of 2019.



C.R.P.No.4948 of 2024

WEB COPY

4.The relationship between the parties is not in dispute. The brother of the first plaintiff is the first defendant, his sister-in-law is the second defendant and his niece is the third defendant. The second plaintiff is the wife of the first plaintiff and the plaintiffs 3 to 5 are the children born to plaintiffs 1 and 2.

5.It is the case of the plaintiffs that on 24.10.2008, a Power of Attorney was executed by them in favour of the second defendant. The said Power was registered on 28.10.2008. On the strength of the Power of Attorney, the second defendant executed a sale deed in favour of the first defendant on 29.10.2008. On the very same day, the first defendant mortgaged the property in favour of the third defendant.

6.The plaintiffs pleaded that the defendants 1 and 2 had promised the plaintiffs to give half share in the ancestral property situated at Jagir Ammapalayam, Salem. Taking advantage of the relationship and by using undue influence, coercion and by practicing fraud, the first defendant



C.R.P.No.4948 of 2024

WEB COPY

obtained a release deed on 03.06.2004. Subsequently, in order to grab the property which came to the hands of the plaintiffs, the Power of Attorney was also executed. They pleaded that the third defendant was only a student on 29.10.2008, the date of execution of the mortgage deed and she had no wherewithal to advance the amount to the first defendant. On these and several other pleas, including the plea that they are in possession of the property, they presented the suit.

7.The defendants entered appearance. The first defendant filed a detailed written statement denying the averments made in the plaint. According to him, the Power of Attorney was executed without any vitiating circumstances and that the second defendant had executed a sale deed in favour of the first defendant on the date mentioned in the plaint. In paragraph 11 of the statement, he pleaded that on 29.10.2008, after receipt of a sum of Rs.2,05,000/-, the documents had been executed by the plaintiffs. The receipt had not been produced as a document along with the written statement.



C.R.P.No.4948 of 2024

WEB COPY

8.On these pleadings, issues were framed and the trial commenced.

9.The plaintiffs have completed their part of examination. During the course of examination of the first defendant as D.W.1, he marked the receipt dated 29.10.2008. The first defendant was cross examined by the plaintiffs on the said receipt. Thereafter, the plaintiffs filed an application in I.A.No.8 of 2024 calling upon the second defendant to produce the original document of Power of Attorney in the Court.

10.The purpose for production of the original of the Power of Attorney (the certified copy having been marked as Ex.A1), is to compare the same with the other document regarding the signature and ink in the documents. This application was resisted by the defendants stating that the first plaintiff had admitted to the execution of the Power of Attorney during the course of his cross examination. The learned Trial Judge agreed with the defendants and dismissed the application. Hence, this revision.



C.R.P.No.4948 of 2024

11.I heard Mr.D.Lakshmipathy for the civil revision petitioners and Mr.S.Bharanidharan for the respondents.

12.The counsels reiterated the contentions that were placed by the counterparts in the Court below. I have gone through the records including the impugned order.

13.The revision is on a narrow compass. The plaintiffs plead that the original of Power of Attorney is available with their agent, namely, the second defendant. The execution of the Power of Attorney is not in dispute. What is in dispute is the receipt dated 29.10.2008 that has been produced by the first defendant.

14.Though Mr.D.Lakshmipathy seeks production of the document for comparison of signature and ink between the power deed and the receipt, for comparison of ink, there is no technology available yet. Hence, the document obviously need not be produced for the purpose of comparison of the ink.



C.R.P.No.4948 of 2024

WEB COPY

15.However, for comparison of the signatures, the certified copy produced under Ex.A1 cannot be utilized. The original has to be produced before the Court. As the plaintiffs are not in possession of the original, they called upon the person in whose custody the document is available, to produce the same.

16.The learned Trial Judge had dismissed the petition without considering the fact, the plaintiffs admit to the Power of Attorney but deny the alleged receipt produced by the defendants. The only way in which the signature in the receipt can be compared with the admitted signature is by production of original admitted document on its production, a comparison of the same along with the disputed document can be done.

17.As pointed out above, the execution of Power of Attorney is not in dispute. It is an admitted document. It is on the basis of this document, the first defendant derives title from the first defendant and a mortgage was created in favour of the third defendant.



C.R.P.No.4948 of 2024

WEB COPY

18. Being an undisputed document, the Lower Court erred in dismissing the application for production. Hence, I am constrained to interfere. Accordingly, the order passed by the learned District Munsif at Andhiyur in I.A.No.8 of 2024 in O.S.No.157 of 2019 dated 19.10.2024 is set aside. The defendants shall produce the original Power of Attorney dated 24.10.2008 registered on 28.10.2008 to enable comparison of the signatures with those found in Ex.B1.

19. Accordingly, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2025

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
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C.R.P.No.4948 of 2024

V.LAKSHMINARAYANAN, J.

cse

To

The District Munsif Court,
Anthiyur.

C.R.P.No.4948 of 2024

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