

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM
PRESENT: Thiru. A. M. Ravi, B.A., B.L.,
II Additional District Judge, Salem.

Friday, the 22nd day of September 2023

I.A.No. 1/2020 & I.A.2/2020

in

A.S. 46/2018

IN BOTH THE PETITIONS

Govindarasu Gounder

... Petitioner/ Appellant /
Plaintiff

/Vs/

IN BOTH THE PETITIONS

1. Gnanasoundari

2. Senthil @ Senthilkumar

... Respondents/ Respondents
/Defendants.

These petitions are taken on file on 04.02.2020 and came up before me on 13.09.2023 for final hearing in the presence of Thiru.N.JayaBalaMurugan, Advocate for Petitioner, and of Thiru.S.S.Vijayaraghavan, Advocate for the Respondents. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

COMMON ORDER

The Petitioner / Appellant filed these Petition under Section 45 of Indian Evidence Act and Order XXVI Rule 10B of C.P.C. to order to send the disputed signatures in Ex.A4 to be compared with the admitted signature in Ex.A1 to Ex.A3 in the suit by a handwriting expert in the FSL and seeking appointment of Commissioner

2. The Summary of the averments in the affidavits filed by the Petitioner / Appellant / Plaintiff in both the I.A. 1/2020 and I.A.2/2020 are as follows:-

The Petitioner / Appellant filed a suit for Specific performance of the agreement of sale executed by the 1st Respondent dated 29.09.1991. The sale agreement was marked as Ex.A1 which contains two signatures which are admitted to those of the 1st Respondent / 1st Defendant. There are three endorsements in the sale agreement in Ex.A1 which are marked as Ex.A2, Ex.A3 and Ex.A4 of these endorsements the signature in Ex.A2 and the signature in Ex.A3 are admitted to be those of the 1st Respondent / 1st Defendant. The trial Court relied on the denial of the signature in Ex.A4 alone without considering the value of other evidence including the admission of the signatures in Ex.A2 and Ex.A3 has rendered a wrong Judgment holding that on the basis of this denial the suit is barred by limitation. This endorsement Ex.A4 and the signature therein goes to the root of the Judgment of the trial Court and has been the sole basis of the Judgment of the trial Court. When in the same document Ex.A2 four signatures are admitted and the 5th signature alone is disputed and denied and there is absolutely no reliable evidence to support such denial. The 1st Respondent / 1st Defendant ought to have been taken steps to prove that

the disputed signature Ex.A4 was not her signature by sending the document to an expert. When she failed to do so in the trial Court instead of relying on such failure has taken the unwarranted risk of comparing the signatures by its own naked eye and has come to wrong conclusion and has dismissed the suit. There by the Petitioner / Appellant filed this petition to sent the document to the expert of the FSL for comparing the signatures and seeking appointment of Commissioner to take the document containing the signatures to the FSL, Chennai.

3. The Summary of the averments in the counter statements filed by the Respondent in both the I.A. 1/2020 and I.A. 2/2020 are as follows:-

The suit for specific performance was filed by him in the year of 2014, after the suit for possession was filed by the Respondent. Possession was ordered in the suit which was filed in O.S.74/2012 by the Respondents. The suit for specific performance in O.S.31/2014 by the Petitioner which was dismissed. All the endorsements were available and the Petitioner has not filed any petition to send the document to the Expert. Now he has filed the application to take the document to the Expert nearly 10 years. The Petitioner is in possession of the property and to drag on the matter and to remain in possession is filing an

application to send the document to Expert. The trial Court has clearly rendered a Judgment considering the all points raised by the Petitioner in the matter. The petition is highly vexatious and liable to be dismissed.

4. Both sides no oral and documentary evidence are marked.

5. Both sides arguments heard.

6. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not ?

7. The Appellant / Plaintiff originally filed a suit for Specific performance on the file of the Sub Court, Omalur in O.S.391/2018. The above suit was dismissed after full trial, against the Decree and Judgment the Petitioner / Appellant prepared an appeal before this Court in AS 46/2018 pending the appeal the Petitioner/ Appellant filed this application for seeking appointment of Commissioner to compare the disputed signature in the Ex.A4 Sale agreement with the admitted signature of the Respondent / Defendant which are Ex.A1 to Ex.A3 in the suit sale agreement. For which the Petitioner / Appellant submitted that the agreement of sale executed by the 1st Respondent dated 29.09.1991. The sale agreement was marked as Ex.A1 which contains two signatures which are admitted to those of the 1st Respondent / 1st Defendant. There are three endorsements in the sale agreement in Ex.A1 which are marked

as Ex.A2, Ex.A3 and Ex.A4 of these endorsements the signature in Ex.A2 and the signature in Ex.A3 are admitted to be those of the 1st Respondent / 1st Defendant.

8. The trial Court relied on the denial of the signature in Ex.A4 alone without considering the value of other evidence including the admission of the signatures in Ex.A2 and Ex.A3 has rendered a wrong Judgment holding that on the basis of this denial the suit is barred by limitation. This endorsement Ex.A4 and the signature therein goes to the root of the Judgment of the trial Court and has been the sole basis of the Judgment of the trial Court. When in the same document Ex.A2 four signatures are admitted and the 5th signature alone is disputed and denied and there is absolutely no reliable evidence to support such denial. The 1st Respondent / 1st Defendant ought to have been taken steps to prove that the disputed signature Ex.A4 was not her signature by sending the document to an expert the agreement of sale executed by the 1st Respondent dated 29.09.1991.

9. The Respondent / Defendant side objection in their counter is that the suit for Specific performance in O.S.31/2014 by the Petitioner which was dismissed. All the endorsements were available and the Petitioner

has not filed any petition to send the document to the Expert. Now he has filed the application to take the document to the Expert nearly 10 years. The Petitioner is in possession of the property and to drag on the matter and to remain in possession is filing an application to send the document to Expert. The trial Court has clearly rendered a Judgment considering the all points raised by the Petitioner in the matter.

10. Considering the contention submitted by the both sides and on careful perusal of the trial Court Judgment in 8th page 8th para the learned trial Judge categorically observed that ...

"27.02.1992 ல் கிரைய ஒப்பந்தத்தை கால நீட்டிப்பு செய்து எழுதிக் கொடுக்கப்பட்ட மேற்குறிப்பான வா.சா.ஆ.2 யையும் 1ம் பிரதிவாதி ஒப்புக் கொண்டுள்ளார். மேற்கண்ட அதே தேதியில் வாதியிடம் 1ம் பிரதிவாதி ரூ.67,150/-ஐ பெற்றுக் கொண்டு ஒரு ரசீது எழுதிக் கொடுத்துள்ளார். அந்த ரசீது வா.சா.ஆ.3 ஆக குறியீடு செய்யப்பட்டுள்ளது. மேற்கண்ட வா.சா.ஆ.3 பற்றியும், 1ம் பிரதிவாதி ஒப்புக் கொண்டுள்ளார். இந்த சூழ்நிலையில் பிரதிவாதிகள் தர்ப்பு வாதம் என்ன என்றால் வா.சா.ஆ.1ஆன கிரைய ஒப்பந்தத்திற்கு பிறகு வா.சா.ஆ.2 ஆன மேற்குறிப்பு மற்றும் வா.சா.ஆ.3 ஆன ரசீது ஆகியவைகள் எழுதிக் கொடுக்கப்பட்டது உண்மை என்றும், ஆனால் வா.சா.ஆ.3 ற்கு பிறகு பாக்கி கிரைய தொகையை செலுத்தி விட்டு கிரையத்தை முடித்துக் கொள்ள வாதி எப்போதும் விருப்பமாகவும் தயாராகவும் இருந்ததில்லை என்றும், ஆனால் அதற்கு மாறாக 13.01.1994 ல் வாதியிடம், 1ம் பிரதிவாதி ரூ-30,000/-ஐ பெற்றுக் கொண்டு அதற்கு ஆதரவாக ஒரு மேற்குறிப்பு எழுதிக் கொடுக்கப்பட்டதாக சொல்லி, அந்த மேற்குறிப்பு வா.சா.ஆ.4 ஆக குறியீடு செய்யப்பட்டுள்ளது. மேற்படி வா.சா.ஆ.4 ஆனது வாதியால்

மோசடியாக தயார் செய்யப்பட்டது என்றும், வா.சா.ஆ 4 ஆன மேற்குறிப்பில் 1ம் பிரதிவாதி கையொப்பம் செய்யவில்லை என்றும், மேற்படி வா.சா.ஆ.4 ஆன மேற்குறிப்பானது பெரியசாமி செட்டியார் என்பவரால் எழுதப்படவில்லை என்றும், கிரைய ஒப்பந்தத்தில் அடிப்படையில் பாக்கி கிரைய தொகையை செலுத்திவிட்டு கிரையத்தை முடித்துக் கொள்ள வாதி உரிய காலத்தில் எந்த நடவடிக்கையும் எடுக்காமல் இருந்து விட்டு காலவாதியான கிரைய ஒப்பந்தத்திற்கு உயிர் கொடுக்கவேண்டும் என்ற ஒரே காரணத்தினால் வா.சா.ஆ 4 ஆன மேற்குறிப்பானது வாதியால் மோசடியாக தயார் செய்யப்பட்டது என்றும், அந்த ஆவணத்தின் அடிப்படையில் வாதி ஏற்றதனை ஆற்றுக பரிகாரம் கோரி இந்த வழக்கு தாக்கல் செய்யப்பட்டுள்ளதால் வாதிக்குஎந்த வித பரிகாரமும் கிடைக்கக்கூடியது இல்லை என்றும் வாதம் எடுத்துரைக்கப்பட்டது.

11. At this juncture considering the authorities submitted by the petitioner / Appellant learned Counsel reported in . . .

1.2019(3)MWN (Civil) 545

The Hon'ble High Court of Madras.

S.A.No.188 & CMP Nos.19869 & 4892 of 2018

Ramayee Vs. Kasthuri

2. In the Hon'ble High Court of Madras.

C.R.P.(PD).NO.495/2017 and C.M.P.No.2451 of 2017

P. Palanisamy Gounder Vs. R.Sowbhagyavathy

3.(2003) 3 M.L.J.408

In the Hon'ble High Court of Madras.

C.R.P.(NPD)N.1613 of 2002 and CMP NO.16597 of 2002

Palaniammal Vs. Palaniswami and others.

it reveals that in the Appeal stage also the Appellate Court ordered to comparison of disputed signatures with the Admitted signatures to the FSL to determine the real fact and to decide the appeal on merit. Considering the facts and circumstances and in the interest of Justice and to arrive the correct conclusion and to decide the appeal on merit this petition is allowed with following conditions:

- i. Mr.G.Ajith, M.S.No.7617/2021, Advocate appointed as a Court Commissioner and directed him to bring the disputed signatures contain in the Ex.A4- endorsement dated 13.01.1994 in the Ex.A1 Sale agreement, and with admitted signatures of the Respondent / 1st Defendant in Ex.A2 & Ex.A3 - the endorsements dated 29.09.1991, 27.02.1992 respectively in the Ex.A1 Sale agreement with the sealed cover of this Court and handed over it to the concerned Forensic handwriting Expert, Chennai authority for comparison of the same and after the comparison the Commissioner has directed to receive the same from the Forensic Department and to handover before this Court in earlier time.
- ii. The commissioner remuneration is fixed Rs.12,000/-.

- iii. The Head Ministerial staff of this Court (Sherishtadar) directed to make necessary arrangements for the comparison of disputed and admitted signatures contained in the document (Ex.A1) with affix Court specimen seal and duly packed with documents in a proper manner and affix a seal and comply the order properly and utilize the amount Rs.18,000/- to be deposited by the Petitioner / Appellant for obtained necessary demand draft for meet out the expenses of the Forensic department and also payment of the commissioner remuneration.
- iv. The Petitioner / Defendant directed to deposit for a sum of Rs.18,000/- before this Court to meet out the expenses of the Advocate Commissioner fee and also the Forensic expert fees regarding the comparison of the documents. The amount Rs.18,000/- to be deposited on or before 17.10.2023 before this Court. Failing which this petition shall stands dismissed. Call on 18.10.2023.

IN THE RESULT:

This petition is allowed with following conditions:

- i. Mr.G.Ajith, M.S.No.7617/2021, Advocate appointed as a Court Commissioner and directed him to bring the disputed signatures contain in the Ex.A4- endorsement dated 13.01.1994 in the Ex.A1 Sale agreement, and with admitted signatures of the Respondent / 1st Defendant in Ex.A2 & Ex.A3 - the endorsements dated 29.09.1991, 27.02.1992 respectively in the Ex.A1 Sale agreement with the sealed cover of this Court and handed over it to the concerned Forensic handwriting Expert, Chennai authority for comparison of the same and after the comparison the Commissioner has directed to receive the same from the Forensic Department and to handover before this Court in earlier time.
- ii. The commissioner remuneration is fixed Rs.12,000/-.
- iii. The Head Ministerial staff of this Court (Sherishtadar) directed to make necessary arrangements for the comparison of disputed and admitted signatures contained in the document (Ex.A1) with affix Court specimen seal and duly packed with documents in a proper manner and affix a seal and comply the order properly and utilize the amount Rs.18,000/- to be deposited by the Petitioner / Appellant for obtained necessary demand draft for meet out the expenses of the Forensic department and also payment of the commissioner remuneration.

iv. The Petitioner / Defendant directed to deposit for a sum of Rs.18,000/- before this Court to meet out the expenses of the Advocate Commissioner fee and also the Forensic expert fees regarding the comparison of the documents. The amount Rs.18,000/- to be deposited on or before 17.10.2023 before this Court. Failing which this petition shall stands dismissed. Call on 18.10.2023.

The order dictated to Steno-typist, directly by her, corrected and pronounced by me in the open Court, the 22nd day of September 2023.

sd/-A.M.Ravi
II Additional District Judge,
Salem.

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

sd/-A.M.Ravi
II Additional District Judge,
Salem.