

**IN THE COURT OF THE III ADDITIONAL DISTRICT JUDGE, SALEM.
PRESENT : Thiru. G.SRI RAMA JEYAM, B.L.,
III Additional District Judge,
Salem**

Wednesday, the 28th day of February 2024

I.A.No.2/2023 in O.S.No.223/2017

1. Kuppayee
2. Mohan
3. Madheswari

..... Petitioners/Defendants

/ Versus /

G.Shanmugam

..... Respondent/Plaintiff

This petition came up on 30.01.2024 for final hearing before me in the presence of Tr.V.Jayakumar, Advocate for the Petitioners/Defendants and Tr.S.Ganesan, Advocate for the Respondent/Plaintiff and upon hearing the arguments of both sides and upon perusing the records and having stood over for consideration till this day, this Court delivers the following

ORDER

Defendants in O.S.No.223/2017 are the Petitioners in the present application, which is filed under section 45 of the Indian Evidence Act, praying this Court to appoint an Advocate Commissioner to take the Sale agreement dated 31.01.2011, which is under dispute, and the available relevant documents that contained the signatures of Late Kuppusamy, for the purpose comparison of signatures, to the expert and to obtain expert opinion.

2) According to the Petitioners, the Respondent has filed the above Suit, on the basis of a Sale agreement dated 31.03.2011, seeking Specific Performance. In fact, the said document was not at all executed by one Late Kuppusamy as alleged by the Respondent; that the alleged signatures of Late Kuppusamy found in the said Sale agreement are forged and created for the purpose of achieving illegal gain and therefore, comparison of those disputed signatures with that of the admitted signatures

of Late Kuppusamy through an expert attached with the Forensic Sciences Department, Chennai is necessary and therefore, the Petition may be allowed.

3) The Respondent opposes on the ground of delay.

4) Now, the Point that arises for consideration is that Whether comparison of signatures as prayed for by the Petitioners could be ordered?

Point

5) Heard both sides and perused the records.

6) Perusal of records would show that the Respondent has filed the above Suit seeking Specific Performance of an agreement dated 31.03.2011 contending that the said agreement was executed by Late Kuppusamy.

7) The Petitioners are the Legal heirs of Kuppusamy. They have filed their Written Statement disputing the very execution of the Sale agreement by Late Kuppusamy and in Para No.5, they have specifically stated that the alleged signatures of Late Kuppusamy found in the above Sale agreement are forged.

8) Since, the Petitioners have taken the plea of forgery, the burden is upon them to prove the said Defence by way of Legally acceptable evidence. True the above Application has been filed belatedly and the same has not been filed at the earliest point of time.

9) However, this Court is of the considered view that the prayer asked for by the Petitioner could not be rejected only on the ground of delay and the interest of justice would require that the above Application need to be allowed and the delay in filing the above Application could be compensated by way of cost.

10) Along with the above Application, the Petitioner have produced a certified copy of a Sale Deed dated 28.03.2012 that contains the signature of Kuppusamy. The Sale agreement in question is dated 31.03.2011. Therefore, the above 2 documents seem to be contemporaneous.

11) Therefore, this Court feels that the admitted signatures contained in the above Sale Deed dated 28.03.2012 could be compared with that of the disputed

signatures contained in the Suit Sale agreement.

12) Though, in the Petition, the Petitioners have prayed that the disputed signatures may be compared with the relevant documents containing the admitted signatures of Late Kuppusamy, that on 30.01.2024, the Learned Counsel appearing for the Petitioner has filed a Memo stating that the term relevant documents denotes the Sale Deed dated 28.02.2012.

13) In such view of the matter, this Court is inclined to order comparison of the disputed signatures with that of the admitted signatures of Late Kuppusamy through an expert.

In result, the above application is allowed as prayed for and the following directions are issued;

i) The disputed signatures found in the Suit Sale agreement Deed dated 31.03.2011 are ordered to be compared with that of the admitted signatures of Late Kuppusamy that are contained in the Sale Deed dated 28.03.2012, through a Hand Writing Expert attached to the Office of the Director/Deputy Director (Documents Division), Hand Writing Department, Government Forensic Sciences Department, Forensic House, Mylapore, Chennai.

ii) For the above purpose, the original Suit Sale agreement Deed dated 31.03.2011 is ordered to be transmitted to the above Expert, in a sealed cover, through an Advocate / Commissioner.

iii) Before transmitting the said Original Suit Sale agreement Deed dated 31.03.2011, the Sheristadhar of this Court is directed to take two photo copies of that document and he shall attest those copies properly and keep one true copy in the case bundle and another copy in his safe custody (May be in the Wall Coffor or Almirah).

iv) Advocate Tr.P.SELVARAJ, Enroll No.106/2017 is appointed as Commissioner in the above application.

v) The Learned Advocate / Commissioner is hereby requested to receive the above documents, in a sealed cover, which will be handed over to him by the Office

of this court and he shall handover the sealed cover in the Office of the Expert, which is referred above, within 10 days from the date of receipt of the sealed cover from the office.

vi) His remuneration is fixed as Rs.7,500/- (including traveling and other expenses) to be paid by the Petitioners directly to the Advocate / Commissioner within 10 days from today.

vii) The Petitioners/Defendants are further directed to pay a sum of Rs.5,000/- to the Advocate/Commissioner for the purpose of paying necessary comparison charges at the Forensic Sciences Department.

viii) The Advocate / Commissioner is hereby directed to pay necessary Expert fees at the Office of Forensic Sciences Department directly, while handing over the sealed cover in the said Office and the Learned Advocate / Commissioner has to repay the balance amount, out of Rs.5,000/-, to the Petitioners / Defendants directly.

The Petitioners are directed to pay cost of Rs.3,000/- to the Respondent towards compensating the delay in filing the above Application on or before 13.03.2024.

Call this Application on 28.03.2024.

Office is directed to hand over the cover to the Learned Advocate Commissioner only after ensuring that the cost amount has been paid.

Dictated by me to the Steno-typist, transcribed by her in Computer, corrected and pronounced by me in open court, this the 28th day of February, 2024.

III Additional District Judge,
Salem.

APPENDIX:

Petitioners' Side Witnesses and Documents : NIL

Respondents' Side Witnesses and Documents : NIL

III Additional District Judge,
Salem.