

Muthulakshmi Vs Desiya Azhagan

Court: Madras High Court

Date of Decision: Dec. 2, 2008

Citation: (2009) 2 CivCC 645 : (2009) 1 CTC 285

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: K. Rajsekar, for the Appellant; R. Balakrishnan, for the Respondent

Final Decision: Dismissed

Judgement

M. Venugopal, J.

This Civil Revision Petition is projected by the revision petitioner/first defendant as against the order dated 09.06.2008

in I.A.No.303 of 2007 in O.S.No.85 of 2004 passed by the Principal District Judge, Villupuram, in dismissing the Application filed by the revision

petitioner/first defendant u/s 45 of the Indian Evidence Act and to appoint a Handwriting and Forensic Expert to submit his report after examining

the contents of documents and purchase of stamp details, ink, thumb impression available in the sale agreement and the signature found in all the

papers of the said document.

2. The Trial Court while passing orders in I.A.No.303 of 2007 has inter alia opined that ""when the Application is filed belatedly, the petitioner is

not entitled for the relief and has resultantly dismissed the Application"".

3. The learned counsel for the revision petitioner/first defendant urges before this Court that the order passed by the Trial Court in I.A.No.303 of

2007 is against law and contrary to facts and probabilities of the case. The Trial Court ought to have seen that the main Suit itself is for specific

performance of the agreement of sale dated 15.03.2003 and that the revision petitioner/first defendant has specifically denied in the written

statement that she has not executed any agreement of sale in favour of the plaintiff and further that the Trial Court has not taken into account the

fact that the sale agreement dated 15.03.2003 has been typed on a five rupees stamp paper purchased on 28.03.1992 which indicates that the

signatures and thumb impression of the petitioner herein have been forged by the respondent on the said stamp paper and that the reasons assigned

by the Trial Court in dismissing the Application are not well founded and therefore, prays for allowing the Civil Revision Petition.

4. Per contra, the learned counsel for the respondent/plaintiff submits that the revision petitioner/first defendant has projected the I. A.No.303 of

2007 belatedly before the Trial Court and that the reasons adduced by the Trial Court in dismissing the Application are reasoned one and

therefore, this Court sitting in Revision at this stage need not interfere with the order passed by the Trial Court.

5. The learned counsel for the respondent/plaintiff contends that age of the ink cannot be determined by an expert with scientific accuracy and in

support of his contention, he relies on the decision in the case of S. Gopal Vs. D. Balachandran, wherein this, Court has observed that "age of ink

cannot be determined by an expert with scientific accuracy and use of old ink on purpose would only dent opinion of expert and result in further

confusion." He also cites the decision in the case of N. Chinnasamy Vs. P.S. Swaminathan, wherein this Court has inter alia observed that "when

defendant disputes signature in document relied on by plaintiff it is for plaintiff to take steps for examination of disputed signature by sending

document to handwriting expert...

6. This Court has paid its anxious consideration to the arguments advanced by the learned counsel appearing for the parties and noticed their

contentions.

Admittedly, the respondent/plaintiff has filed a Suit against defendants 1 and 2, praying for the relief of specific performance with an alternative

prayer of directing the first defendant to pay a sum of Rs.50,000/- being the amount of advance paid together with interest accrued till the date of

filing of the Suit and with further interest at the rate of 18% per annum from the date of plaint till the date of realization, etc.

7. It transpires from the written statement filed by the revision petitioner/first defendant that she has denied the sale agreement as one of concoction

and the same being a fabricated one. Infact the averment of the civil revision petitioner/first defendant in the written statement is to the categorical

effect that she has not executed any agreement of sale dated 15.03.2003. The revision petitioner/first defendant in her written statement has not

specifically referred to anything about the use of old ink, her thumb impression in the agreement being forged or about the purchase of stamp

details, as required under Order 8, Rule 5. CPC, wherein the defendant has to specifically deny the allegation of fact made in the Plaint.

8. The main contention of the revision petitioner/first defendant is that in the first page of the purported sale agreement dated 15.03.2003, it is

written as 04.04.1978/28.03.1992 and that the stamp paper of the year 1992 has been made use of by the respondent/ plaintiff and therefore,

there is possibility of the agreement being concocted or created for the purpose of the present case. He also draws the attention of this Court to

the property details in the schedule of the agreement wherein the Ayan Punja Survey number originally stood as 282/4 has been scored out by the

Document Writer and over and above that has been written as 289/4 and in regard to this striking of, there is no corresponding signature of the

parties to the document and therefore, it creates suspicion as to the manner in which the agreement has come into existence. I.A.No.303 of 2007

has been filed before the Trial Court in the month of August 2007 and the counter of the respondent/plaintiff reportedly has been filed on

05.11.2007.

9. In the instant case on hand, the respondent/plaintiff has not filed any Application praying for examination of the thumb impression of the revision

petitioner/first defendant or the ink or the stamp papers to send the sale agreement for comparison by expert with that of the admitted signature.

Only the revision petitioner/first defendant has projected the present Interlocutory Application. It appears when PW1 has been examined in the

main case, at that time I.A.No.303 of 2007 has been projected by the civil revision petitioner. Though the delay of filing the said I.A.No.303

of 2007 may not be put against the revision petitioner/first defendant, this Court is of the considered view when the revision petitioner/first

defendant has not whispered anything about the thumb impression being different in the sale agreement, and the date of stamp found in the

agreement in the written statement. In short, this Court opines that there is no specific denial in regard to these matters in the written statement filed

by the revision petitioner/first defendant and in that view of the matter when the trial has commenced in the main case, it is not open to the civil

revision petitioner to project the said I.A.No.303 of 2007.

10. In that view of the matter, this Civil Revision Petition is dismissed in the interest of justice. The order passed by the Trial Court in I.A.No.303

of 2007 is confirmed for the reasons affirmed by this Court in this Revision. The Trial Court is directed to dispose of the main Suit within a period

of three months from the date of receipt of a copy of this order. It is made clear that the Trial Court shall dispose of the Suit uninfluenced with any

of the observations made by this Court in this. Revision. Liberty is given to the revision petitioner/first defendant to take all available defences in

regard to the marking of Ex. A1 document in the manner known to law and the parties are directed to co-operate with the Trial Court in regard to

the completion of the proceedings of the main Suit. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also

dismissed.