

Joseph Vs. Michael and Others

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Court : Chennai Madurai

Decided On : Apr-04-2016

Judge : The Honourable Ms. Justice V.M. Velumani

Appeal No. : C.R.P(MD)Nos. 2424 & 2425 of 2015(PD) & M.P.(MD).No. 1 of 2015 & 1 & 2 of 2015

Appellant : Joseph

Respondent : Michael and Others

Judgement :

(Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 27.08.2015, made in I.A.No.290 of 2015 in O.S.No.141 of 2011 on the file of the Principal District Munsif, Manamadurai.)

(Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 12.09.2015, made in I.A.No.328 of 2015 in A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai.)

Common Order:

Since the issue involved in both the Civil Revision Petitions are one and the same, with the consent of both parties, they are taken up together and disposed of by a common order.

2. The petitioner in C.R.P.(MD).No.2425 of 2015 is the defendant in O.S.No.151 of 2010 and appellant in A.S.No.8 of 2015. The respondent is the plaintiff and he filed the suit in O.S.No.151 of 2010, for declaration and permanent injunction. The said Suit was decreed. Against the said judgment and decree, the petitioner filed A.S.No.8 of 2015 on the file of the Sub Court, Sivagangai. While the first appeal is pending, the petitioner filed I.A.No.328 of 2015 for appointment of an Advocate Commissioner to compare his disputed signature and fingerprints in Ex.A.16-sale deed, dated 17.12.1997 and Ex.A.15-partition deed, dated 06.05.1987, with his signature and fingerprints of the year 2015, with the help of a handwriting expert. The respondent opposed the same, stating that after 28 years of the partition deed and after 16 years of the sale deed, the disputed signature can not be compared with the signature of the year 2015. The learned Judge considering the facts and materials on record, dismissed the application. Against that order of dismissal the present C.R.P.(MD).No.2425 of 2015 is filed.

3. While O.S.No.151 of 2010 filed by the respondent was pending, the petitioner filed the suit in O.S.No.141 of 2011, for partition against the respondent and his other brothers and sisters. The petitioner filed I.A.No.290 of 2015, for stay in O.S.No.141 of 2011 filed by him till the disposal of the first appeal in A.S.No.8 of 2015 filed against the judgment in O.S.No.151 of 2010. The learned Judge after considering the facts and materials on record, dismissed the application in I.A.No.290 of 2015 filed by the petitioner, on the ground that the relief sought for in the two suits, parties to the suit and the suit properties are different. Against that order of dismissal C.R.P.(MD).No.2424 of 2015 is filed.

4. The learned counsel for the petitioner in both suits, contended that the learned Judge erred in dismissing the application filed by the petitioner and prevented the petitioner from adducing evidence to prove his case. The dismissal of the application amounts to miscarriage of justice. The learned Judge failed to see that properties which are the subject matter of O.S.No.151 of 2010 is also the subject matter of A.S.No.8 of 2015. The issue involved in the Suit as well as the first appeal in A.S.No.8 of 2015 are one and the same. As per Section 10 of C.P.C., trial can be stayed at any stage.

5. The learned counsel for the respondent in C.R.P.(MD).No.2425 of 2015 and the first respondent in C.R.P.(MD).No.2424 of 2015 filed counter along with the vacate stay petition in C.R.P.(MD).No.2425 of 2015. The learned counsel for the respondent submitted that the signature in Ex.A16, dated 17.12.1997 and Ex.B9/Ex.A.15, dated 06.05.1987 can not be compared that with the signature of the year 2015. The learned Judge has properly appreciated the facts and dismissed the application filed by the petitioner. Similarly, I.A.No.290 of 2015 filed by the petitioner in O.S.No.151 of 2010, for stay of the said Suit is only to drag on the proceedings. The petitioner has not taken any steps for joint trial in O.S.No.151 of 2010 and O.S.No.141 of 2011. Therefore, the learned Judge has rightly dismissed the applications filed by the petitioner.

6. Heard the learned counsel on either side in both suits and perused the materials available on record.

7. The petitioner seeking permission to obtain opinion from the handwriting expert with regard to the signature in the Ex.A16, dated 17.12.1997 and Ex.B9/Ex.A.15, dated 06.05.1987, with his signature of the year 2015. It is well settled that disputed and admitted signature of contemporary period only can be compared by a handwriting expert, with regard to the genuineness of the disputed signature. As the time passes, the signature of a person will differ and therefore no useful purpose will be served by comparing the signature of the year 1987 and 1997 with the signature of the year 2015. Similarly the decree was passed in O.S.No.151 of 2010 on 19.12.2014. The petitioner has filed O.S.No.141 of 2011, While O.S.No.151 of 2010 was pending. At that time, the petitioner has not taken any steps for joint trial of both the suits. In the circumstances, the contention of the learned counsel for the first respondent that the petitioner has filed I.A.No.290 of 2015 for stay in O.S.No.141 of 2011 filed by him, till the disposal of the first appeal in A.S.No.8 of 2015 filed against the judgment in O.S.No.151 of 2010, only to drag on the proceedings is acceptable. Similarly, aggrieved party may file further appeal is also tenable. The learned judge has given cogent and valid reasons for dismissing the application. Hence, there is no irregularity or illegality, warranting interference by this Court in the said order.

8. Further, the learned counsel for the respondent submitted that the respondent, Michael, is now, 73 years old and sought for a direction to the Courts below for speedy disposal of the first appeal and the suit. Therefore, the learned Sub Judge, Sivagangai, is directed to dispose of the first appeal in A.S.No.8 of 2015 in O.S.No.151 of 2010, and the learned Principal District Munsif, Manamadurai, is also directed to dispose of the suit in O.S.No.141 of 2011, as expeditiously as possible, in any event, not later than 31st day of October, 2016.

9. With the above direction, both Civil Revision Petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

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