

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 15.07.2026

Order pronounced on : 31.07.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

CRP.Nos.4681 & 4682 of 2025
& CMP.No.23714 of 2025

1.M.Sivakami
2.M.Umarani
3.S.Mallika
4.S.Gokul
5.S.Aswathi

.. Petitioners
in both CRPs

Vs.

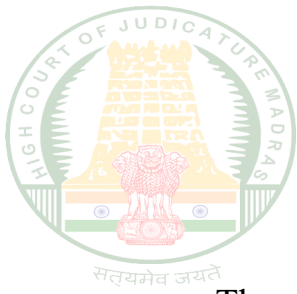
V.Jayanthi

.. Respondent
in both CRPs

Common prayer: Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 29.07.2025 in I.A.Nos.1 & 3 of 2023 in A.S.No.67 of 2023 on the file of the II Additional District and Sessions Court, Tiruppur.

For Petitioner : Mr.N.Manoharan in both CRPs

For Respondents : Mr.M.R.Thangavel in both CRPs



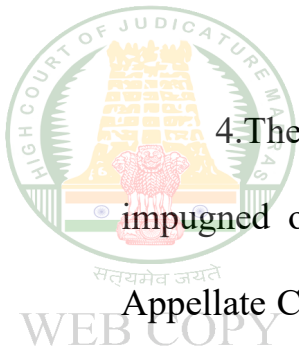
COMMON ORDER

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The appellants, who are defendants in a suit for specific performance, are the revision petitioners, aggrieved by the order in I.A.Nos.1 & 3 of 2023 in A.S.No.67 of 2023 on the file of the II Additional District and Sessions Court, Tiruppur.

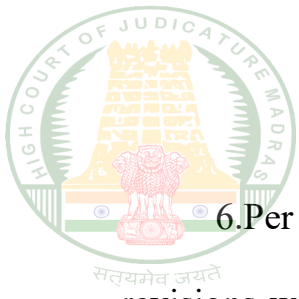
2.I have heard Mr.N.Manoharan, learned counsel for the revision petitioners-defendants and Mr.M.R.Thangavel, learned counsel for the respondent-plaintiff.

3.Mr.N.Manoharan, learned counsel for the revision petitioners in both the revisions would contend that an application was filed before the First Appellate Court under Section 45 of the Indian Evidence Act, seeking an opinion of a handwriting expert with regard to genuineness of signatures found in Ex.A2 and Ex.A3, by comparing them with admitted signatures found in a release deed dated 26.07.2010. The said application was dismissed by the First Appellate Court, as against which, the petitioners moved this Court in CRP.No.1136 of 2024 and this Court, by order dated 22.08.2024, allowed the said revision and had directed the petitioners to take out an application under Order XLI Rule 27 of CPC and thereafter, directed the First Appellate Court to dispose of both the applications under Order XLI Rule 27 of CPC, as well as the application for comparison of signatures by a handwriting expert.



4.The learned counsel for the revision petitioners, taking me through the impugned orders passed by the First Appellate Court, would contend that the First Appellate Court has not even referred to the order passed by this Court in CRP.No.1136 of 2024 and has erroneously proceeded to dismiss the applications. He would further contend that when the petitioners are willing to take a risk in seeking comparison, though the petitioners are only defendants in the suit, the First Appellate Court ought to have objectively considered their request and allowed the applications.

5.Taking me through the observations made by this Court in CRP.No.1136 of 2024, the learned counsel for the revision petitioners would contend that this Court had virtually directed the First Appellate Court to entertain the application filed for comparison of signatures, after curing the defect of not filing the application under Order XLI Rule 27 of CPC, for the purposes of adducing additional evidence. He would further contend that first appeal being only a continuation of the original proceedings, no prejudice would be caused to the respondent, if the handwriting expert's opinion is obtained, which would virtually seal the rights of the parties. In support of his submissions, the learned counsel for the petitioners has relied on the decision of this Court in *K.R.Chinnasamy Vs. K.R.Chinnasamy*, reported in 2011 (2) MWN (Civil) 637, as well as my judgment in a first appeal in *A.Krishnamoorthy Vs. L.Murugesan*, reported in 2026 SCC Online Mad 5027.



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6. Per contra, Mr.M.R.Thangavel, learned counsel for the respondent in both the revisions would firstly contend that though the earlier revision was allowed, directing the petitioners to file an application under Order XLI Rule 27 of CPC, he would contend that this Court only directed the First Appellate Court to decide the said application first and thereafter, the application for comparison of signatures, on its own merits, without being influenced by any of the observations and findings rendered in the said revision, namely CRP.No.1136 of 2024. He would further state that even before the Trial Court, an application had been filed by the defendants for seeking expert opinion and pending the said application, the 2nd defendant died and his legal representatives are brought on records as defendants 4 to 6. However, no steps were taken to amend the cause title in the interlocutory application seeking opinion of an expert and consequently, the said application was dismissed for default. He would therefore contend that it is not open to the petitioners to seek for an expert opinion, by way of adducing additional evidence, having lost the opportunity before the Trial Court, especially after having participated in the trial of the suit, after being impleaded as legal representatives of the deceased 2nd defendant. He would therefore pray for dismissal of the revision petitions.

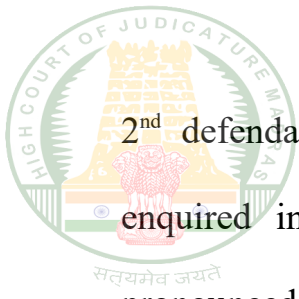
7. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records and the decisions on which Mr.N.Manoharan has placed strong reliance upon.



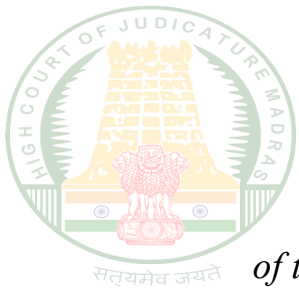
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8. The case of the respondent is that one P.Marimuthu, is the husband of the 1st defendant and father of defendants 2 and 3. The respondent-plaintiff sought for specific performance of an agreement of sale with P.Marimuthu who had agreed to sell his property to the respondent-plaintiff and since the 2nd defendant passed away, his legal heirs, namely defendants 4 to 6 and the plaintiff participated in a Panchayat and Ex.A2 - Muchalika and Ex.A3 - sale agreement were entered into. The respondent-plaintiff had agreed to pay an additional sum of Rs.3,30,000/- to defendants 1 to 3 and out of the said sum, Rs.1,80,000/- was also paid as advance and in respect of the balance Rs.1,50,000/-, the parties had agreed that the said amount would be paid within a period of nine months, consequent upon which the sale deed would be executed by the defendants in favour of the plaintiff.

9. Alleging refusal to perform their part of the contract, the respondent-plaintiff filed a suit for specific performance, after exchange of notices between the parties. Pending trial, the defendants, namely wife and sons of late Marimuthu had filed an application in I.A.No.155 of 2017 under Section 45 of the Indian Evidence Act, seeking to compare the signatures in Exs.A2 and A3 with the admitted signatures. To the said application, the respondent also filed a counter. Thereafter, for the purposes of producing admitted signatures, the defendants also produced the original of a release deed dated 26.07.2010 before the Trial Court. After about eight months, the Driving License of the



2nd defendant was also filed and the interlocutory application for comparison was enquired into and orders were reserved on 12.06.2018. Before orders could be pronounced in the said I.A.No.155 of 2017, the 2nd defendant died, leaving behind the defendants 4 to 6. In I.A.No.572 of 2019, the defendants 4 to 6 were also brought on record on 01.10.2019. In order to carry out necessary amendment in I.A.No.155 of 2017, on account of the death of the 2nd defendant, I.A.No.155 of 2017 was reopened on 17.12.2019, for taking necessary steps to amend the petition. After granting sufficient time and finding that the defendants failed to take steps to amend I.A.No.155 of 2017, the Trial Court dismissed the said application for non-prosecution. No steps were taken by the defendants to restore I.A.No.155 of 2017. Instead, they participated in the trial of the suit. Three witnesses were examined on the side of the defendants and on 07.12.2022, the suit was decreed by the Trial Court. Aggrieved by the decree for specific performance, the defendants also preferred A.S.No.67 of 2023 and along with the appeal, I.A.No.1 of 2023 was taken out, once again, seeking comparison of signatures in Exs.A2 and A3 with admitted signatures in the released deed dated 26.07.2010 and one another document dated 10.03.1995. In and by order dated 23.01.2024, I.A.No.1 of 2023 was dismissed by the First Appellate Court. The said order was challenged before this Court in CRP.No.1136 of 2024 and by order dated 22.08.2024, the revision petition filed by the petitioners was allowed. It would be useful to extract certain relevant portions of the order passed by this Court, as it would be appropriate to consider the earlier order of this Court, by deciding the present revision petition.



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“9.This Court is of the opinion that the appeal is a continuation of the suit and the right of the petitioners to seek for comparison of the signature in the disputed documents cannot be curtailed on mere technicalities. The defendants have to be permitted to project the pivotal defence raised by them in the suit filed against them. No doubt, the petitioners have already filed an application before the trial court under Section 45 of the Indian Evidence Act and it was dismissed. Subsequently, the suit was also decreed ex parte against the petitioners without considering the same. In other words, the pleadings raised by both sides have not been evaluated on merits.

10.The endeavour of every Court should be to do substantial justice by disposing of matters on merits and not get mired by mere technicalities. However, as pointed out by the learned Senior Counsel, the application for Expert opinion without an application under Order 41 Rule 27 C.P.C., may not be maintainable, when such an application has already been filed before the trial Court and left to be dismissed for default. Further, this Court also finds that the Appellate Court has also not given any finding with regard to the documents sought to be send for Expert Opinion in the impugned order. In view of the above, the order passed by the first appellate Court is liable to be set aside.

11.Accordingly, the order passed by the first Appellate Court in I.A. No. 1 of 2023 in A.S. No. 67 of 2023 dated 23.01.2024 stands set aside and the matter is remitted back for reconsideration. The petitioner shall file an application under Order 41 Rule 27 of the Code of Civil Procedure. If any such application is filed, the appellate Court shall deal with it first on merits and in accordance with law and decide the application filed in I.A.No.1 of 2023 in A.S. No. 67 of 2023. It is made clear that the observations made in this civil revision petition will not have any bearing on any further proceedings before the Appellate Court.”

The learned counsel for the petitioners placed lot of emphasis on the above portions of the order in CRP.No.1136 of 2026.



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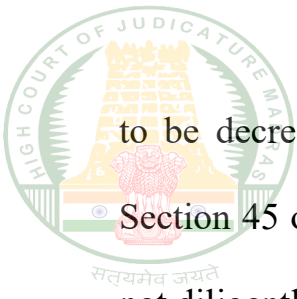
10. Referring to the observations made by this Court in the said order, the learned counsel would contend that only in order to cure the technical defect in not taking out an application under Order XLI Rule 27 of CPC, the revision was allowed, to enable the petitioners to take out such an application and the First Appellate Court was thereafter directed to decide the application under Order XLI Rule 27 of CPC first, on merits and thereafter, consider I.A.No.1 of 2023, seeking comparison of disputed signatures with the admitted signatures.

11. I have carefully gone through the order passed by this Court. It is noticed that this Court has proceeded, on the footing that even though the petitioners have already taken out an application before the Trial Court under Section 45 of the Indian Evidence Act and it was dismissed, this Court has held that the suit was subsequently decreed ex-parte against the revision petitioners, without considering the application filed under Section 45 of the Indian Evidence Act. This Court has therefore found that the pleadings of both parties have not been evaluated on merits. This has weighed in the mind of the Court, while holding that the Court should not get mired by any of technicalities and another opportunity has to be given to the petitioners to cure technical defects pointed out, namely, non filing of application under Order XLI Rule 27 of CPC and thereafter directed the First Appellate Court to decide both the applications under Order XLI Rule 27 of CPC, as well as Section 45 of the Indian Evidence Act.



12. This Court has not been appraised of the fact that the suit had not been decreed ex-parte. In fact, the defendants had examined three witnesses on their side and have fully participated in the trial of the suit. The defendants were conscious of the fact that an application in I.A.No.155 of 2017 had been filed. It is only the 2nd defendant who passed away pending the said application and his legal representatives were impleaded as defendants 4 to 6. Therefore, it does not even lie in the mouth of the petitioners, especially, defendants 1 and 3 to contend that they were not aware of the filing of I.A.No.155 of 2017, which was, in fact, filed by all the three defendants. The trial Court also reopened I.A.No.155 of 2017, for enabling the petitioners to carry out necessary amendments consequent to the death of the 2nd defendant. Despite, the application being reopened on 17.12.2019 and sufficient opportunity being granted to the petitioners, no steps were taken to amend I.A.No.155 of 2017, which ultimately resulted in dismissal of I.A.No.155 of 2017 on 18.02.2020.

13. As rightly pointed out by Mr.M.R.Thangavel, the defendants did not take any steps to set aside the order of dismissal of I.A.No.155 of 2017. On the contrary, trial of the suit commenced one year later, namely on 11.03.2021 and the evidence of the plaintiff was concluded only in September 2021 and thereafter, on the side of the revision petitioners, three witnesses were examined between 26.09.2022 and 09.11.2022. After conclusion of trial, arguments were also advanced on both sides and the suit came



to be decreed only on 07.12.2022. Therefore, having taken out an application under

Section 45 of the Indian Evidence Act, even before the Trial Court, the petitioners have not diligently prosecuted the said application and therefore, it is not proper on the part of the petitioners to contend that an appeal, being a continuation of the suit, there is no embargo for the petitioners to seek for comparison of disputed signatures at the appellate stage.

14. Therefore, the legal position that an appeal is a continuation of a suit cannot be pressed into service in the present circumstances, especially when the petitioners had already exercised their right, seeking comparison of disputed signatures, they did not pursue the said application to a logical conclusion. Therefore, I do not see how the petitioners can be permitted to fill up the lacuna on their part before the Trial Court, by renewing the application under Section 45 of the Indian Evidence Act, before the First Appellate Court.

15. Coming to the decisions that have been strongly relied on by the learned counsel for the petitioners, in *K.R.Chinnasamy's case*, this Court, relied on the earlier decision in *N.Chinnasamy Vs. P.S.Swaminathan*, reported in 2006 (4) CTC 850, and held that when the revision petitioner in the said case had denied the signatures even before the Trial Court and the plaintiff relies upon the said signatures, then it is for the plaintiff to take steps for examination of disputed signatures, by sending the documents to a



handwriting expert. Relying on the said decision, the learned counsel for the petitioners would contend that what was required to be done by the respondent was undertaken by the petitioners by taking out I.A.No.155 of 2017 and therefore, the application ought to have been allowed.

16.Though reliance is also placed on in my decision in *A.Krishnamoorthy's case*, referred herein supra, that was a case where the Court had compared signatures on its own and a request for sending the disputed signatures for comparison to an expert was turned down. I do not see how the said decision would in any manner apply to the benefit of the revision petitioners herein.

17.As held by this Court in *K.R.Chinnasamy's case*, when the defendant had disputed his signature in material documents, then the burden is upon the plaintiff take steps for examination of the disputed signatures and burden is not upon the defendants. However, in the present case, admittedly, the plaintiff did not take out any application and it was the defendants, who filed I.A.No.155 of 2017, which was however not prosecuted and came to be dismissed for default. It is always open to the petitioners to agitate the issue of burden of proof and the factum of the respondent-plaintiff not taking steps to prove the signatures in the disputed documents during the course of arguments in the appeal. However, having failed in their attempt to seek comparison before the Trial Court, I am unable to entertain the same request being made before the First



Appellate Court, as it would clearly amount to filling up the omissions on the part of the petitioners, as defendants in the suit, despite there being even no necessity for such an application being taken out by the petitioners, as the burden was only upon the plaintiff to prove his case.

18.Though this Court in *N.Chinnasamy's case*, held that expert opinion would give more clarity for arriving at a decision upon the truth and genuineness of the document, the Hon'ble Supreme Court in *Chennadi Jalapathi Reddy Vs. Baddam Pratapa Reddy (Dead) through LRs and Another*, reported in (2019) 14 SCC 220, has held that the opinion of the expert is not conclusive.

19.Further, there is one another relevant and significant factor which cannot be brushed aside. Though the learned counsel for the petitioners has strongly relied on the order passed by this Court in CRP.No.1136 of 2024, while disposing of the said revision, this Court has specifically made it clear that the application filed under Order XLI Rule 27 of CPC would have to be dealt with first on merits and in accordance with law and thereafter the application for comparison filed in I.A.No.1 of 2023 would have to be decided and that any observations made in the said order i.e CRP.No.1136 of 2024, will not have any bearing on any further proceedings before the Appellate Court. Therefore, the entire arguments of Mr.N.Manoharan, relying upon the various observations made by this Court, is only an exercise in futility.



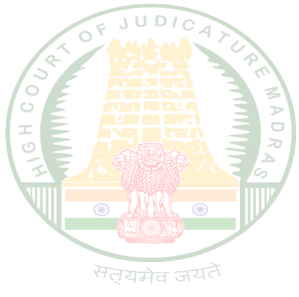
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20. The First Appellate Court has independently found that having missed the bus, despite having taken out an application pending trial, the petitioners cannot fill up the lacuna at the appellate stage. The findings arrived at by the First Appellate Court are therefore proper and do not warrant interference in revision. Insofar as the application filed under Order XLI Rule 27 of CPC, the First Appellate Court has held that when the petitioners had sufficient opportunity to pursue their application in I.A.No.155 of 2017 and having not done so and the said application having been dismissed, it is not open to the petitioners to seek for production of additional evidence by invoking Order XLI Rule 27 of CPC. This order also, in my considered opinion, is well merited and does not require interference.

21. In fine, the Civil Revision Petitions are dismissed. The II Additional District and Sessions Court, Tiruppur, shall decide A.S.No.67 of 2023, on merits and in accordance with law, and dispose of the same on or before 31.10.2026. No costs. Connected Civil Miscellaneous Petition is closed

31.07.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

The II Additional District and Sessions Court, Tiruppur.



P.B.BALAJI.J,

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Pre-delivery order made in
CRP.Nos.4681 & 4682 of 2025
& CMP.No.23714 of 2025

31.07.2026