

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.1518 of 2015

and

M.P.No.1 of 2015

A.VivekAnand
S/o.N.Anand

.. Petitioner/Plaintiff/Petitioner

Vs.

1.Mr.K.Padmanaban
S/o.K.Venkatraju

2.Mr.K.V.Kothandaraju
S/o.K.Venkatraju

.. Respondents/Defendants/Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 12.02.2015 made in I.A.No.53 of 2014 in O.S.No.10 of 2013 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet.

For Petitioner : Mr.Y.Jyothish Chander

For Respondents : Mr.T.P.Prabakaran, for R1 & R2

ORDER

Heard the learned counsel appearing for the revision petitioner and the learned counsel appearing for the respondents.

2. The revision petitioner has come forward with the present Civil Revision Petition challenging the impugned order dated 12.02.2015 made in I.A.No.53 of 2014 in O.S.No.10 of 2013, wherein the application filed under Order 11 Rule 14 CPC to direct the defendants to produce the original registered settlement deed dated 09.03.2010 executed by the 1st defendant in favour of the 2nd defendant into Court for verification, comparison and scrutiny by the Court and expert commissioner came to be dismissed.

3. The learned counsel for the revision petitioner would submit that the revision petitioner as plaintiff has filed the suit for recovery of money due on a promissory note and also on an equitable mortgage. The defendants raised the plea of forgery. While so, when the evidence on the side of the plaintiff was over and when the 1st defendant was in the witness box, he denied the signatures in the instruments and hence, the revision petitioner was constrained to file an application in I.A.No.53 of 2014 to direct the respondents to

produce the original registered settlement deed dated 09.03.2010 for comparison and an application in I.A.No.54 of 2014 for appointment of commissioner for sending the Exs.A.1 to A.3, A.4 and A.5 to expert opinion, to prove that the promissory note contains the signature of the 1st defendant.

4. The learned counsel for the revision petitioner would further submit that even though the certified copy of the registered settlement deed dated 09.03.2010 is available for comparison and the signature is also clearly visible, it may not be appropriate to get the expert opinion, without comparing with the original document and hence, the original document is necessary. The Trial Court without considering those aspects had dismissed the application and hence, the learned counsel for the revision petitioner prayed for allowing the revision.

5. Resisting the same, the learned counsel for the respondent would submit that the Trial Court in paragraph 8 of the order has given a clear finding that though Ex.A.5 is a certified copy of the document, the signature of the 1st defendant is very well visible in the said document and the same can be compared with the admitted signature. The learned counsel would further submit that the Trial

court has also rightly held that the signature of the 1st defendant is also found in the vakalath and the written statement and the same can also be sent for comparison. Thus, the learned counsel for the respondents prayed for dismissal of the civil revision petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. The revision petitioner herein as plaintiff has filed the suit for recovery of money stating that the first defendant has borrowed a sum of Rs.25,00,000/- from the plaintiff on 16.09.2009 for his personal expenses and for the purpose of development of his school and its building, promising to repay the same with interest at 24% per annum and executed a promissory note in favor of the plaintiff. Again on 17.10.2009, the first defendant had borrowed a sum of Rs.15,00,000/- and executed another promissory note, promising to repay the same with interest at 24% per annum. The first defendant also deposited the title deed in respect of 'B' schedule property by creating an equitable mortgage.

8. However, after creating an equitable mortgage in favour of the revision petitioner/plaintiff, the first defendant had settled the

property under a registered settlement deed dated 09.03.2010 in favour of the second defendant, who is none other than the brother of the first defendant. Hence, the revision petitioner/plaintiff issued a notice dated 14.08.2012. Even after the receipt of the notice, the first defendant neither issued any reply nor repaid the money and hence, the revision petitioner as plaintiff has filed the suit in O.S.No.10 of 2013.

9. At the time of filing the written statement, the first defendant raised the plea of forgery. To prove the document, the plaintiff was examined as P.W.1 and the attester was examined as P.W.2. When the evidence on the side of the plaintiff was over and when the first defendant was in the witness box, the promissory note was placed before him. However, the first defendant denied the signature in the instrument. Hence, the revision petitioner filed the applications in I.A.Nos.53 and 54 of 2014. The Trial Court has rightly allowed the application for sending the disputed document with the admitted document for comparison by the handwriting expert, but dismissed the application to direct the defendant to produce the original registered settlement deed dated 09.03.2010 executed by the 1st defendant in favour of the 2nd defendant into court for verification, comparison and scrutiny by the Court.

10. The learned Trial Court in paragraph 8 of the order has given a clear finding that though Ex.A.5 is a certified copy of the document, the signature of the 1st defendant is very well visible in the said document and the same can be compared with the admitted signature. However, the forensic department would find it difficult to compare the disputed signature with that of the admitted signature in the xerox copy of the document.

11. So, the finding of the Trial Court that Ex.A.5, certified copy of the document is sufficient for comparison is illegal and unsustainable and the same is liable to be set aside. The next reasoning given by the Trial Court for dismissing the application viz., the signature of the 1st defendant which is found in his vakalath and written statement can be compared is also unsustainable because as per the dictum of the Hon'ble Apex Court, the admitted signature in the contemporary period has to be taken into account for comparison.

12. In these circumstances, I am of the view that the order dated 12.02.2015 made in I.A.No.53 of 2014 in O.S.No.10 of 2013 is illegal and unsustainable and the same is hereby set aside and the Civil Revision Petition stands allowed. Further, the respondents are

directed to produce the original registered settlement deed dated 09.03.2010 executed by the 1st defendant in favour of the 2nd defendant into the Trial Court on or before 25.11.2012. Consequently, connected miscellaneous petition is closed. No costs.

04.11.2015

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Note: Issue order copy on 20.11.2015

To

The learned II Additional District
and Sessions Judge,
Vellore at Ranipet

R.MALA, J.

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Dated : 04.11.2015