

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:28.4.2015

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

C.R.P.PD.No.4934 of 2011

and

M.P.No.1 of 2011

1.Abdusalam
2.A.Saleem

... Petitioners

Versus

S.E. Vasudevan

..Respondent

Prayer: Revision petition is filed to set aside the order, dated 18.10.2011 and made in I.A.No.574 of 2011 in O.S.No.266 of 2010 on the file of the learned Principal Subordinate Judge, Salem.

For Petitioner: Mr. J.Sudhakaran

For Respondent : Mr.A. Tamilvanan

ORDER

This memorandum of civil revision has been directed against the fair and decretal order, dated 18.10.2011 and made in the application in I.A.No.574 of 2011 in O.S.No.266 of 2010 on the file of the learned Principal Subordinate Judge, Salem.

2. The revision petitioners herein are the defendants in the suit in O.S.No.266 of 2010, whereas the respondent is the plaintiff.

3. On perusal of the records, it is revealed that the respondent/plaintiff has filed the above suit as against the revision petitioners for the recovery of a sum of Rs.5,14,400/- together with interest at the rate of 24% p.a. from the date of the suit till the date of realisation.

4. The defendants have disputed the allegation of borrowing of Rs.3,00,000/- on 11.12.2006, from the plaintiff.

5. Under these circumstances, the trial was commenced after formulating necessary issues. Only at that time, the revision petitioners/defendants have chosen to file the application in I.A.No.574 of 2011 under Section 45 of the Evidence Act, 1872 to send the disputed pronote to the Government Forensic Sciences Laboratory, Hyderabad, for obtaining an expert opinion, with regard to the verification of the age of the ink and the period of execution and also to verify the difference in the period of signature.

6. This petition was vehemently resisted by the respondent/plaintiff.

7. After hearing both sides, the learned trial Judge has proceeded to dismiss that application on 18.10.2011.

8. Challenging this order, the defendants stand before this Court with this revision.

9. On cursory perusal of the averments of the plaint filed by the respondent/plaintiff, it is revealed that on 11.12.2006, the revision petitioners/defendants had borrowed a sum of Rs.3,00,000/- from the respondent/plaintiff and in witnessing thereof, they had also executed a demand promissory note on the same date agreeing to pay the same with interest at the rate of 24% p.a. As per this averment, the suit pronote is dated back to 11.12.2006.

10. On perusal of the averments of the written statement, the defendants have stated that they along with their father and mother had borrowed a sum of Rs.5,00,000/- on 13.2.1996 from the respondent/plaintiff and that amount was repaid and the document, i.e., the registered sale agreement was cancelled after repayment.

11. Further, they have stated that on 19.2.2002 they had also borrowed a sum of Rs.3,00,000/- from the plaintiff and executed a rental agreement deed, in favour of the plaintiff. But they have simply stated that they did not execute any demand promissory note on 11.12.2006.

12. After the commencement of the trial only, the revision petitioners/defendants have taken out the above said application to send the disputed pronote to the Central Forensic Science Laboratory, Hyderabad, to verify the age of the ink and the period of execution of the said pronote.

13. Now a days, filing of an application in so far as the suit relating to recovery of money on demand promissory note is concerned, has become popular to send the demand promissory note or any other document to the Forensic Science Laboratory, to verify either the signature or the age of the ink etc. in order to protract the proceedings and also to gain some time.

14. In so far as this suit is concerned, the alleged demand promissory note seems to have been executed on 11.12.2006 and the suit itself appears to have been filed on 3.12.2009, i.e, within the time

stipulated.

15. The learned trial Judge has observed in the impugned order that the revision petitioners/defendants had contended that the signed pronote was obtained from them in the year 1996, while executing a rental agreement and the same was misused for filing the vexatious suit.

16. The learned trial Judge has also observed that the revision petitioners/defendants are not certain about the execution of the demand promissory note and that they were not able to give a vivid account or correct statement as to whether it was executed in the year 1996 or in the year 2002.

17. As it is revealed from the records, though the defendants have filed their written statement on 16.4.2010, they have never raised any plea with reference to the bar of the claim of the plaintiff by the law of limitation.

18. It is the specific argument advanced on behalf of Mr.A. Tamilvanan, learned counsel appearing for the respondent/plaintiff that the revision petitioners/defendants had never put any question to P.W.1 with regard to the execution of the promissory note

when they were cross examining P.W.1.

19. He has also argued that even in their written statement they had admitted their signature and thumb impression in the promissory note and only for the purpose of procrastinating the suit proceedings, this petition was filed by them vexatiously and therefore, he has urged this Court to dismiss that application after confirming the order of the trial court.

20. On the other hand, Mr.J. Sudhakaran, learned counsel appearing for the revision petitioners/defendants has submitted that the revision petitioners/defendants had never borrowed any amount much less Rs.3,00,000/- from the respondent/plaintiff on 11.12.2006 and they had also never executed any such document on the relevant date. He has also added that there were adequate grounds to suspect the genesis of the suit pronote and that the disputed pronote is, therefore, to be sent to the Government Forensic Sciences Laboratory, to verify the age of the ink and the period of execution of the suit pronote.

21. In support of his contention, he has also placed reliance upon the decisions in **A. Devaraj vs. Rajammal (2011 (2) C.L.T. 159)** and **Darma Venkata Murali**

Krishna Rao vs. Gurujupalli Satvathamma ((2008) 12 SCC 170) .

22. This Court with utmost due care and caution has gone through the above cited decisions. Virtually, this Court finds that these decisions are not made applicable to the instant case on hand, because the facts and circumstances of the instant case are completely different from that of the above cited decisions.

23. Here, the revision petitioners/defendants had admitted in paragraph 3 of their affidavit saying that the suit pronote was executed by them in favour of the plaintiff on 13.2.1996 itself for some other loan transaction borrowed by their father and mother.

24. In paragraph 4, they have also stated that on 19.2.2002 their father had borrowed a sum of Rs.3,00,000/- from the plaintiff and for the repayment of the said amount, the plaintiff had requested them to execute a rental agreement.

25. In this connection, they would state that they had issued an unfilled pronote in the year 1996, which was forged and fabricated for the purpose of this suit. The contention of the learned counsel is not

discernible and liable to be rejected.

26. The candid admission of the revision petitioners/defendants would go to show that the petition itself is filed by them to defeat the ends of justice and also to prevent the respondent/plaintiff from tasting the fruits of the decree, which he may be able to get after the disposal of the suit.

27. With this observation, the civil revision petition is dismissed confirming the order of the court below. However, there will be no order as to costs. Connected M.P. is also dismissed.

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28.4.2015

Index:Yes/No.

Internet:Yes/No.

To

The Principal Subordinate Judge, Salem.

T. MATHIVANAN, J.

RNB

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