

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2015

CORAM:

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

C.R.P.(PD).No.4432 of 2015

and

M.P.No.1 of 2015

R.Sivasamy

.. Petitioner/Petitioner/Defendant

Vs.

Thirumalaisamy

.. Respondent/Respondent/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 25.06.2015 made in I.A.No.708 of 2013 in O.S.No.154 of 2010 on the file of the Subordinate Court, Pollachi.

For Petitioner : Mr.S.Sithirai Anandam

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. The revision petitioner has come forward with the present Civil Revision Petition challenging the impugned order dated 25.06.2015 made in I.A.No.708 of 2013 in O.S.No.154 of 2010, an application filed under Order 26 Rule 10 CPC to appoint an advocate commissioner to obtain the opinion from the forensic sciences department, Chennai and to entrust the suit promissory note along with the samples of signature of the petitioner taken by the Court for comparison.

3. The learned counsel appearing for the revision petitioner, who is the defendant in the suit would submit that the respondent/plaintiff is none other than the brother of the petitioner and he has filed the suit for recovery of money due on a promissory note dated 26.01.2008. The petitioner/defendant also filed a written statement stating that he has not received any amount and that there is no necessity for such transaction. It was also stated therein that the signature in the promissory note does not belong to him.

4. While so, during the pendency of the suit, the revision petitioner/defendant has filed the application in I.A.No.708 of 2013 in O.S.No.154 of 2010 for sending the documents to the forensic department. The Trial Court after hearing both sides had allowed the application and ordered to send the documents for getting opinion from the forensic sciences department.

5. However, when the document was sent for opinion, the Forensic Sciences Department had sent a communication dated 25.08.2014, wherein it was stated as follows:

"The questioned signatures (R.Sivasamy) belongs to the year 2008 (Promissory dated 06.01.2008) where as the admitted signatures of the same person belong to the year 2005. Hence I request some (5 to 10 Nos) admittedly genuine signatures (in Tamil) of the "R.Sivasamy" on existing documents like deeds, any bank documents, receipts, vouchers etc., preferably made during the year 2007-2008 are desirable for examination."

6. While so, the petitioner filed a memo stating that only one document pertaining to the relevant period is available with him. On the basis of the said memo, the Trial Court has passed the impugned

order.

7. At the time of admission, the learned counsel for the petitioner would submit that he had already filed the partition deed of the year 1986. But as per the dictum of the Hon'ble Apex Court, only the admitted signature in the contemporary period has to be taken into account for comparison. So, the said document cannot be used for comparison.

8. The learned counsel would further submit that in the additional typed set of papers, the house tax receipt of the year 2008-09 and the water tax receipt of the year 2008 has been filed. However, those two documents are not sufficient, when it has been specifically stated in the communication sent by the Forensic Sciences Department that they require atleast 5 to 10 admitted signatures that came into existence during the contemporary period.

9. In such circumstances, the impugned order passed by the Trial Court cannot be faulted with, when no sufficient signatures that came into existence during the contemporary period is available for comparison. Hence, I am of the view that the Trial Court has considered the matter in proper perspective and the order of the Trial

Court does not warrant interference by this Court.

10. In fine, the Civil Revision Petition stands dismissed.
Consequently, connected miscellaneous petition is closed. No costs.

08.12.2015

pgp

To

The learned Subordinate Court,
Pollachi.

R.MALA, J.

pgp

C.R.P.(PD).No.4432 of 2015

Dated : 08.12.2015