

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4618 of 2013
and M.P.No.1 of 2013

R.Mani

.. Petitioner

Vs

L.Karuppusamy

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 16.07.2013 made in I.A.No.126 of 2013 in O.S.No.29 of 2011 on the file of the III Additional District and Sessions Judge, Coimbatore.

For Petitioner : Mr.R.Lakshmi Narasimhan
For Respondent : Mr.V.Vijayakumar

ORDER

The Civil Revision Petition is filed against the order dated 16.07.2013 made in I.A.No.126 of 2013 in O.S.No.29 of 2011 on the file of the III Additional District and Sessions Judge, Coimbatore.

2.The respondent as a plaintiff filed a suit in O.S.No.29 of 2011 for

recovery of money due on a promissory note. The petitioner as the first defendant filed a written statement and taken the plea that the promissory note was not executed by him. To prove that the promissory note was not executed by him, the first defendant filed an application in I.A.No.126 of 2013 to send the documents to the Forensic Department for comparison and to obtain opinion from the hand writing expert. The Trial Court has dismissed the said application by stating that the defendant has not taken the plea of forgery both in the reply notice as well as in the written statement. Against which, the present Civil Revision Petition has been filed by the petitioner/first defendant.

3.Learned counsel for the petitioner submitted that in paragraph No.2 of the reply notice, he has stated that he has not executed the promissory note, likewise in paragraph No.4 of the written statement, he has denied the execution of the promissory note. That factum was not considered by the Trial Court. He would further submitted that the promissory note was said to have executed on 29.12.2001, the memorandum of deposit of title deeds confirming the mortgage was also said to have executed on 02.01.2002, but the suit has not been filed under Order 34 of CPC. So, the suit is barred by limitation. He further submitted that the suit is not maintainable since there is no cause of action. Hence, he prayed for setting aside the order passed by the Trial Court.

To substantiate his arguments, he relied upon the following decisions:

- 1. 1998 (II) CTC 502 (H.Amalraj vs. Regina)**
- 2. 2009 (6) CTC 29 (V.P.Sankaran vs. R.Uthirakumar)**
- 3. 2011 (2) MWN (Civil) 637 (K.R.Chinnasamy vs. K.R.Chinnasamy)**

4. Resisting the same, the learned counsel for the respondent/plaintiff submitted that the petitioner has executed the promissory note on 29.12.2001 and the memorandum of deposit of title deeds was executed on 02.01.2002 i.e. after three days. The suit has been filed within 12 years from the date of execution of memorandum of deposit of title deeds and so, the suit has been filed well within the time. He further submitted that neither in the reply notice nor in the written statement and the additional written statement, the petitioner/first defendant has never raised the plea that the promissory note and memorandum of deposit of title deeds does not contain his signature and he has not taken the plea of forgery. That factum was rightly considered by the Trial Court. He would also submitted that in the additional written statement he has stated that he has already settled the mortgaged property to his wife and hence, on that basis the wife of the first defendant was impleaded as second defendant. The Trial Court has considered all the aspects in proper perspective and dismissed the application. Hence, he prayed for dismissal of the revision petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The case of the respondent/plaintiff is that the petitioner herein has borrowed Rs.10 lakhs on 29.12.2001 by executing a promissory note and he has also executed the memorandum of deposit of title deeds confirming the mortgage by deposit of title deeds on 02.01.2002. The suit has been filed within 12 years and so, the suit has been filed well within the time. But whether the suit is barred by time has to be decided only at the time of trial. Now the point to be decided is whether the impugned order passed by the Trial Court by dismissing the application filed under Section 45 of the Indian Evidence Act denying the relief of sending the documents to the Forensic Department to obtain opinion from the hand writing expert. It is pertinent to note that before filing the suit, notice has been issued, the first defendant/petitioner herein has sent a reply wherein he has not specifically raised the plea of forgery. At this juncture, it is appropriate to incorporate paragraph No.2 in the reply notice, which is as follows:

“2.ANY how our client denies the very borrowing that of the execution of the Pro-note, acceptance deed ad denies the handed over the document as collateral security,

muchless as claimed by your client in his notice under reply and your client is bound to prove the same.”

7. Likewise in paragraph No.4 in the written statement, he has not given any specific denial and he has stated that he has not borrowed money from the respondent/plaintiff, executed a promissory note and also the memorandum of deposit of title deeds. But there is no pleading that the suit promissory note is a forged one. So, the Trial Court has rightly held that there is no defence in the written statement that the promissory note is a forged one. At this juncture, it is appropriate to consider the decision relied upon by the learned counsel for the petitioner reported in **1998 (II) CTC 502 (H.Amalraj vs. Regina)**, wherein the defence has been raised the plea of forgery. In such circumstances, it was held that opportunity must be given to send for the document for obtaining hand writing expert opinion. So, the above citation is not applicable to the facts of the present case.

8. Similarly in another decision reported in **2009 (6) CTC 29 (V.P.Sankaran vs. R.Uthirakumar)**, the contents of the suit promissory note has been specifically disputed and it was specifically pleaded that the suit promissory note is forged. So, it was ordered to send for the document to the Forensic Department for obtaining hand writing expert opinion. Hence, the

above citation is also not applicable to the facts of the present case.

9. In the decision reported in **2011 (2) MWN (Civil) 637 (K.R.Chinnasamy vs. K.R.Chinnasamy)**, wherein in paragraph Nos.29 and 30, it was held as follows:

“29. In the light of the aforesaid legal principles laid down by the Apex Court as well as this Court, the contention of the learned counsel for the respondent that the burden lies on the defendant to prove that the suit Promissory Note does not contain his signature cannot be countenanced.

30. In the case on hand, the defendant has categorically pleaded in the written statement itself that he had not borrowed any amount from the plaintiff and he had not executed any Promissory Note and the suit Promissory Note is a forged one. In such circumstances, the burden was on the plaintiff to take steps for the examination of the disputed signature by sending the document to get the hand writing expert's opinion. Admittedly, he had not taken any steps. As per the decision reported in **N.Chinnasamy vs. P.S.Swaminathan**, 2006 (4) CTC 850, the Appellate Court could seek expert's opinion even if Trial Court had compared the signature and arrived at some conclusion and therefore, the reasoning of the Court below that as the petitioner had fails to file similar petitions before the Trial Court, it is not open to him to file the same with delay cannot be sustained.”

But the above citation is not applicable to the facts of the present case.

10. In the present case, the petitioner/1st defendant has made only a general denial and he has not specifically denied the suit promissory note.

Furthermore, it is appropriate to consider that in the additional written statement, he has stated that the mortgaged property has been settled in favour of his wife and on that basis, she was impleaded as party to the proceeding as second defendant. In such circumstances, I am of the view that the Trial Court has considered all the aspects in proper perspective and came to the correct conclusion that no purpose will be served in sending the promissory note to the Forensic Department for obtaining hand writing expert opinion. Hence, the impugned order passed by the Trial Court is hereby confirmed and consequently, the Civil Revision Petition is hereby dismissed.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

12. At this juncture, the learned counsel for the respondent/plaintiff sought for early disposal of the suit in O.S.No.29 of 2011 since the suit is of the year 2011. Considering the request made by the learned counsel for the respondent, the Trial Court is directed to dispose of the suit in O.S.No.29 of 2011 within three months from the date of receipt of a copy of this order.

21.12.2015

Index: Yes/No
Internet: Yes/No

cse

R.MALA. J.,

cse

To

The III Additional District and Sessions Judge, Coimbatore.

CRP(PD).No.4618 of 2013

and

M.P.No.1 of 2013

21.12.2015