

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 24.03.2015**

**CORAM**

**THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR**

**C.R.P (PD) No.4243 of 2012**

**&**

**M.P.No.1 of 2012**

V.K.Subramaniam

...Petitioner/Defendant/Petitioner

**Vs.**

K.K.Subramaniam

...Respondent/Plaintiff/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 01.08.2012 made in I.A.No. 60 of 2012 in O.s.No. 411 of 2008 on the file of the Subordinate Judge's Court at Tiruchengode.

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For Petitioner : M/s.Asha  
for M/s.Sarvabhauman Associates

For Respondent : Mr.M.S.Palani

**ORDER**

This revision arises out of an order dated 01.08.2012 made in I.A.No. 60 of 2010 in O.S.No. 411 of 2008 pending on the file of trial Court, namely, Sub Court, Tiruchengode.

**2.** By the said order, the application filed by the revision petitioner, who is the defendant in the said suit, for referring a receipt said to have been executed by the respondent/plaintiff in full and final settlement of the dispute between the parties along with the document containing admitted signature and admitted thumb impression to the Forensic Expert for comparison and opinion came to be dismissed not only on the ground of belatedness but also based on an observation made against the genuineness of the document in question. Aggrieved by the same and challenging the same, the present Revision has been filed.

**3.** The arguments advanced by Mrs.Asha, learned counsel appearing for the petitioner and by Mr.M.S.Palani, learned counsel appearing for the respondent are heard. The impugned order and copies of other documents produced in the form of typed set of papers are also perused.

**4.** The above said suit has been filed by the respondent herein for specific performance based on an agreement for sale dated 01.07.2005 marked as Ex.A-1 on the side of the respondent/plaintiff before the trial Court. The revision petitioner is contesting the suit contending that he did not execute any agreement for sale; that the transaction between the petitioner and the respondent was only a loan transaction; that the signatures obtained in blank stamp papers were used for creating the suit agreement for sale and that even regarding the same, there was an amicable settlement, pursuant to which a particular amount was paid by the revision petitioner/defendant in full quit of the claim of the respondent herein/plaintiff. In support of the said contention, the revision petitioner relies on a receipt dated 1.09.2007 allegedly executed by the respondent herein/plaintiff. Of-course the same was filed along with the written statement of the revision petitioner/defendant and a reply statement denying the execution of the said receipt was filed by the respondent herein/plaintiff on 07.08.2010 itself. However, the application for referring the said document to the finger print expert came to be made only in the month of January 2012. The circumstances under which the said application came to be filed are that though the execution of the said document which was produced along with written statement

was denied by the respondent herein / plaintiff in the reply statement, the petitioner/defendant seems to have been advised that the document could be proved by eliciting admission from the plaintiff while he would be deposing as a witness. But the expectation failed when the document was put to the plaintiff while he was deposing as PW-1, by his denial of the signature and the left thumb impression found therein. Only thereafter the petitioner was advised to seek the opinion of finger print expert and hence, I.A.No. 60 of 2012 came to be filed.

**5.** As rightly pointed out by the learned counsel for the petitioner /defendant, the time gap could not be projected as latches to deny the opportunity to the petitioner to prove the said receipt, execution of which has been disputed by the respondent herein. Since the said document contains the signature as well as the left thumb impression, the petitioner seems to have filed the petition for referring the document along with an admitted document containing the left thumb impression of the respondent/plaintiff to a finger print expert for comparison and opinion.

**6.** Per contra, it is the contention of the learned counsel for the respondent that though the disputed document contains the left thumb impression as well as the signature and both are disputed, the petitioner has chosen to file the petition for referring the matter to the finger print expert for comparison of the thumb impression found in the disputed and admitted documents, without making any prayer for comparison of the signatures found therein by a handwriting expert. Of-course there is such an omission on the part of the petitioner in coining the prayer in the application. However that can be even justified since the opinion regarding the thumb impression shall be more authentic than the opinion regarding the handwriting and the signatures. Even otherwise, the petitioner cannot be non-suited for the relief sought for on the simple ground that he had not sought for the opinion of handwriting expert regarding the signatures found in the disputed and admitted documents. The relief can be moulded by directing the reference of the above said documents not only to the finger print expert, but also to a handwriting expert. For the said reasons, this Court is of the view that the order of the trial Court cannot be sustained and the same deserves to be interfered with.

**P.R.SHIVAKUMAR, J.**

**Vsg**

**7.** Accordingly, the Civil Revision Petition is allowed and the order of the trial Court, dated 01.08.2012 made in I.A.No. 60 of 2012 is set aside with a direction that the admitted and disputed documents should be referred to the Forensic Department for the opinion of not only the finger print expert regarding the left thumb impressions but also that of a handwriting expert regarding the signatures found therein. No costs. Consequently, connected Miscellaneous Petition is closed.

**24.03.2015**

Index: Yes/No  
Internet: Yes/No

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To  
Sub Court, Tiruchengode.

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