



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE P.DEVADASS

C.R.P.(PD)(MD) No.1786 of 2015
and M.P.(MD) No. 1 of 2015

Esakki : Petitioner/Petitioner/Plaintiff

Vs.

Tamilselvi : Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair order and decreetal order passed in I.A.No.506 of 2014 in O.S.No.57 of 2009 dated 12.01.2015 on the file of the Principal Sub Court, Tiurnelveli.

For Petitioner : Mr.S.Meenakshi Sundaram

ORDER

As only a narrow point is involved, we shall dispose of this Civil Revision Petition today at the admission stage itself.

2. This revision arises out of dismissal of I.A.NO.506 of 2014 in O.S.No.57 of 2009 by the learned Principal Sub Judge, Tirunelveli.

3. Heard the learned counsel for the revision petitioner and perused the impugned order and the materials on record.

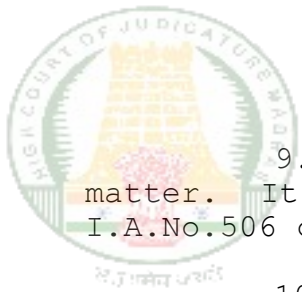
4.O.S.No.57 of 2009 has been instituted by the revision petitioner on the basis of Ex.A.1 promisory note for the recovery of of Rs.4 lakhs with accrued interest thereon.

5. The defendant filed written statement resisting the suit that the signature in Ex.A.1 is not of her. The defendant filed I.A.No.329 of 2011 to examine the said signature with her admitted signatures.

6. A learned Advocate/Commissioner was appointed for this purpose. The Government hand writing expert, compared the signatures and opined that they are not similar and also gave his reasoning.

7. Plaintiff disagreed with the same and also the reasonings. In the circumstances, plaintiff filed I.A.NO.506 of 2014 for re-opening of the evidence to get second opinion by another expert.

8.The trial court dismissed I.A.No.506 of 2014 on the ground that the plaintiff did not mention the name of the expert, plaintiff wished to do so because the opinion of the expert is not to his liking, he ought to have gone to the next higher forum as against the order passed in I.A.No.329 of 2011.



9. Actually, the trial court had failed to have grip of the matter. It has misdirected itself and misunderstood the scope of I.A.No.506 of 2014.

10. The evidence of an expert is not equivalent to the evidence of an ocular witness. It is advisory in nature. It is a scientific mode of arriving at the truth of a disputed matter. It is intended to assist the court to render a correct finding. Such scientific mode is recognized in the Indian Evidence Act.

11. An Expert is an expert in a chosen field. Opinion, such as legal opinion need not be, could not be and should not be universal. Different persons may form different opinion, but they must give their reasoning. Getting second opinion is not impermissible. A client after getting one lawyer's opinion and doctor's opinion may go to another lawyer, doctor for second opinion.

12. In the case before us, the signature in Ex.A1 is stated to have been put by the defendant. It is disputed. Unlike the finding of a Finger Print Expert (dactylography), the science of hand writing, signature (holography) the conclusion cannot be definite, but only opinion. Further, on the sole basis of opinion, a case cannot be decided. It may be one of the factors. It cannot be a sole basis to render a conclusive finding.

13. Courts cannot close their mind or opportunity to get better opinion from other experts when it is possible and feasible. But it should not be a ruse to derail the trial of the suit.

14. Now in this case, there is scope for getting further opinion. But it should not be a ploy to employ delaying tactics. Courts must be very careful.

15. A move for second opinion is acceptable. The matter has to be approached in this way. There is no need to make any appeal as against the earlier order passed in I.A.No.506 of 2014.

16. The provision in the Indian Evidence Act does not say that the expert opinion should be given by a Government Expert. There are better private experts also.

17. In view of the foregoing, the impugned order passed by the trial court is vitiated.

18. In the result, ordered as under:

- i) The order passed by the learned Principal Sub Judge, Tirunelveli in I.A. 329 of 2011 in O.S.No.57 of 2009 is set aside;
- ii) The trial court will re-open the evidence.
- iii) Within 10 days from today the revision petitioner/plaintiff will file a fresh Interlocutory Application in the trial court for the appointment of Advocate/Commissioner for obtaining second opinion on the signature in Ex.A.1 by comparing her admitted signature and the plaintiff must also furnish the details of fresh expert.
- iv) The Advocate/Commissioner's fees, Expert's fees and all



other incidental expenses shall be borne by the revision petitioner/plaintiff.

No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (Co)

WEB COPY

/True Copy/

Sub Assistant Registrar.

To,

1.The Principal District Judge, Tirunelveli.

2.The Principal Sub Court, Tirunelveli.

+1CC to M/S. S.Meenakshi Sundaram, Advocate, SR.No.52426

C.R.P. (PD) (MD) .No.1786 of 2015
07.09.2015

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AM/GSV.PM/SAR-II/08.09.2015.