

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.VENUGOPAL

**CRP (PD) No.1688 of 2013 and
M.P.No.1 of 2013**

B.Vijayakumar

.. Petitioner

Vs.

K.G.Chellamuthu

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.203 of 2013 in O.S.No.176 of 2010 on the file of the Sub-Court, Pollachi dated 20.03.2013 and to set aside the same.

For Petitioner : Mr.S.Arjun
for Mr.D.Muthuselvam

For Respondent : Mr.C.Veeraraghavan

ORDER

The Revision Petitioner/Defendant has filed the present Civil Revision Petition as against the Order dated 20.03.2013 in I.A.No.203 of 2013 in O.S.No.176 of 2010 passed by the learned Sub Judge, Pollachi.

2. The Learned Sub Judge, Pollachi while passing the Impugned

Order in I.A.No.203 of 2013 in O.S.No.176 of 2010 on 20.03.2013 (filed by the Respondent/Plaintiff/Petitioner under Section 45 of the Indian Evidence Act, 1872) had allowed the I.A.No.203 of 2013 by appointing Mr.G.Azagesan, Advocate as Commissioner and fixed his remuneration as Rs.5,000/- and directed him to hand over the documents to the Forensic Science Laboratory at Chennai or to the Forensic Science Laboratory at Madurai and to obtain the report. Further, the remuneration was directly ordered to be paid and on 19.04.2013, the said Advocate Commissioner was to appear before the Court.

3. Challenging the Order dated 20.03.2013 in I.A.No.203 of 2013 in O.S.No.176 of 2010 on the file of the Trial Court, the Learned Counsel for the Petitioner/Defendant submits that the Trial Court had allowed the Application without assigning any reason. With this simple ground alone the Order dated 20.03.2013 in I.A.No.203 of 2013 in O.S.No.176 of 2010 is liable to be set aside in the interest of justice.

4. The Learned Counsel for the Petitioner projects a legal plea that the Respondent/Plaintiff/Petitioner ought to have taken steps for filing a Petition under Section 45 of the Indian Evidence Act, 1872 before the commencement of Trial in the main Suit in O.S.No.176 of 2010 and in fact the Revision Petitioner/Defendant had taken a

categorical plea in the written statement that the promissory note was a forged one. Advancing his arguments, the Learned Counsel for the Petitioner urges before this Court that the evidence of P.W.2 proves that the suit Promissory Note dated 20.02.2008 was not executed by the Revision Petitioner as alleged by the Respondent/Plaintiff.

5. While summing up, the Learned Counsel for the Petitioner takes a stand that the Impugned Order dated 20.03.2013 in I.A.No.203 of 2013 in O.S.No.176 of 2010 on the file of Trial Court is a non-speaking one, especially bereft of reasoning and as such, the same is liable to be set aside by this Court.

6. Per contra, it is the submission of the Learned Counsel for the Respondent/Plaintiff that the Respondent/Plaintiff, as Petitioner, filed I.A.No.203 of 2013 in O.S.No.176 of 2010 on the file of Trial Court (under Section 45 of the Indian Evidence Act, 1872) praying for passing of an Order by the Court to compare the signature of the Revision Petitioner/ Respondent/Defendant with that of the Original Sale Deed Bearing No.1704 of 2008 executed by the Revision Petitioner/Defendant on 16.07.2008 (in and by which, the Revision Petitioner had sold property to and in favour of one Nataraj S/o Subramania Gounder (being his uncle) by sending the same to an handwriting expert and to obtain

his report. As a matter of fact, the Respondent/Plaintiff in I.A.No.203 of 2013 had also mentioned the name of the handwriting expert with her address.

7. It transpires that the specific case of the Respondent/Plaintiff in the main suit is that the suit promissory note was executed by the Revision Petitioner/Defendant (Revision Petitioner) on 20.02.2008 and that the suit was filed within three years from the date of execution of the pro-note. The stand of the Respondent/Plaintiff in the suit is that the Revision Petitioner/Defendant had not paid any amount towards principal or interest to him and a Lawyers Notice on 06.09.2010 was issued to the Revision Petitioner/Defendant and the said notice and acknowledgement card were returned on 08.09.2010. The Revision Petitioner/Defendant had not sent any reply to the aforesaid notice dated 06.09.2010 issued by the Respondent/Plaintiff and had not repaid any sum towards the pro-note. Therefore, the Respondent/Plaintiff had filed the suit against the Revision Petitioner/Defendant before the Trial Court praying for passing of an decree against the Revision Petitioner/Defendant in directing him to pay a sum of Rs.9,24,750/- with subsequent interest for Rs.7,50,000/- at the rate of Rs.12% per annum from the date of filing of the suit till the date of realisation.

8. In effect the clear cut case of the Respondent/Plaintiff (as seen from the plaint) is that on 20.02.2008, the Revision Petitioner/Defendant had borrowed a sum of Rs.7,50,000/- from him for urgent family and agricultural expenses and on the same day, the pro-note was executed for a proper and valuable consideration. Moreover, the Defendant (Revision Petitioner) had agreed to repay the amount with the interest of 12% per annum to the Respondent upon his order of demand.

9. The Revision Petitioner/Defendant in Paragraph No.6 of the Written Statement had stated the following:-

“ The defendant further submits that after settle the amount, the defendant asked the above said Panjavadivel to return back the above stated document (i.e., pronotes and cheques to which, he told that he will send back the documents through his brother Kanakaraj who had coconut business transaction, with the defendant. The defendant believed the words of Panjavadivel. In that juncture a misunderstanding was developed between the defendant and above said Kanakaraj. So immediately the defendant asked his business friend Kanakaraj to give the promissory notes and cheques which were given by his brother Panjavadivel. To which, the said Kanakaraj had given three promissory notes & 3 cheques out 5 each. When the defendant asked the remaining two promissory notes and two cheques, the said Kanakaraj would state that he did not aware of the remaining two blank signed promissory notes

and cheques. When the defendant questioned the above said Panjavadivel regarding the above said remaining two promissory notes and blank cheques, he would state that he had already handed over to his brother Kanakaraj. The defendant had taken all sorts steps to get back the above said remaining documents. But those were went into vain. The defendant was helpless.”

10. At this stage, this Court very relevantly points out that the Revision Petitioner/Defendant in his Written Statement at Paragraph No.7 had averred the following:-

“The defendant submits that one K.S.Nataraj is his paternal uncle. One Subramaniya gounder in his paternal grand father. The defendants paternal uncle, refused and neglected to maintain his father, Subramaniya gounder, so, the defendant's grand father Subramaniya Gounder, had settled his one acre of land in favour of the defendant herein. So, his paternal uncle K.S.Nagaraj, developed enmity against the defendant. After mediation, the defendant sold the above said one acre of land to his paternal uncle K.S.Nataraj for consideration of Rs.7,00,000/- on 16.07.2008. Subsequent to that, the defendant's paternal uncle, developed enmity against the defendant. Now the defendant's paternal uncle, K.S.Nataraj, above said Panjavadivel his brother Kanakaraj and this plaintiff colluded together created the alleged promissory note by forging the defendant's signature. The plaintiff is acting as a tool of them and now they filed this suit in the name of plaintiff in

order to grab the amounts illegally.

11. From the contents of Paragraph Nos.6 and 7 of the Written Statement filed by the Revision Petitioner/Defendant it is latently and patently quite clear that the Revision Petitioner/Defendant had come out with an averment that his paternal uncle, K.S Nataraj and Panchavadivel, his brother Kanakaraj and the Respondent/Plaintiff colluded together, created alleged promissory note by forging his signature etc., When that be the fact situation and especially when the Revision Petitioner/Defendant had taken a plea in the Written Statement in I.A.No.203 of 2013 to the effect that the alleged promissory note was a forged one whereby and where under his signature was forged etc., then, it is the prime duty of the Respondent/Plaintiff to clear the midst shroud or cloud and very rightly the Respondent/Plaintiff had filed I.A.No. 203 of 2013 under Section 45 of the Indian evidence Act, 1872 and sought the necessary relief from the Trial Court (of course the said I.A.No.203 of 2013 in O.S.No.176 of 2010) was belatedly filed by the Respondent/Plaintiff at the time when the main suit was in part-heard stage). In fact, the said I.A.No.203 of 2013 in O.S.No.176 of 2010 was allowed by the Trial Court through its Order dated 20.03.2013. Merely because the said I.A.No.203 of 2013 was filed by the Respondent/Plaintiff (as Petitioner before the Trial Court) it cannot be

put against him because of the latent and patent fact that in the Civil Suit especially when the suit is laid on the basis of the promissory note, it is the duty of the Plaintiff to prove the execution of the said note by the defendant, of course to the subjective satisfaction of the Trial Court.

12. Viewed from that perspective and looking at from any angle the Impugned Order in I.A.No.203 of 2013 in O.S.No.176 of 2010 dated 20.03.2013 passed by the learned Sub Judge, Pollachi in allowing the Application by appointing an Advocate Commissioner, fixing his remuneration and issuing directions thereto does not suffer from any illegal infirmities, material irregularities or patent illegalities in the eye of Law. Consequently, Civil Revision Petition fails.

In fine, the Civil Revision Petition is dismissed leaving the parties to bear their own costs. The Order dated 20.03.2013 in I.A.No.203 of 2013 in O.S.No.176 of 2010 passed by the learned Sub Judge, Pollachi is confirmed by this Court for the reasons assigned in this Revision. Since nearly 6 years have rolled by filing of the present Suit in O.S.No.176 of 2010, this Court, in the interest of Equity, good conscience and even as a matter of prudence directs the learned Sub Judge, Pollachi to dispose of the main Suit (of course after providing

due opportunity to the respective parties to raise all factual and legal pleas) within a period of four months from the date of receipt of copy of this Order and to report compliance to this Court without fail within the four months time granted by this Court. The Trial Court is directed to complete all the formalities in regard to the receipt of Commissioner's Report, Handwriting Expert's Report, filing of objections etc., and to act accordingly in true letter and spirit of the Order passed by this Court in this Revision. It is abundantly made clear that the Trial Court shall dispose of the main suit in a dispassionate manner uninfluenced and untrammelled with any of the observations made by this Court in this Revision. Consequently, connected Miscellaneous Petition is closed.

02.03.2016

Index:Yes/No
Internet:Yes/No
ssd

M.VENUGOPAL, J.

ssd

To
The Sub-Court, Pollachi

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