

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.04.2016

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.2090 of 2012

and

M.P.No.1 of 2012

1.M.Jothi

2.S.Manoharan

... Petitioners

vs.

R.Nirmala

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 27.06.2011 passed in I.A.No.79 of 2010 in O.S.No.14 of 2009 on the file of the learned Subordinate Judge, Mettur, Salem District and allow this Civil Revision Petition.

For Petitioners : Mr.M.R.Jothimanian

For Respondent : No appearance

ORDER

This Civil Revision Petition arises against the order dated 27.06.2011 passed in I.A.No.79 of 2010 in O.S.No.14 of 2009 on the file of the learned Subordinate Judge, Mettur, Salem District.

2. The respondent/plaintiff filed a suit in O.S.No.14 of 2009 on the file of the learned Subordinate Judge, Mettur, Salem, for recovery of money due on the suit promissory note alleged to have been executed by the revision petitioners/defendants.

3. Resisting the suit, the defendants filed a written statement denying the averments made in the plaint in O.S.No.14 of 2009.

4. In the meanwhile, the revision petitioners/defendants filed an Interlocutory Application in I.A.No.79 of 2010 under Section 45 of the Indian Evidence Act praying the Court below to pass an order directing to send the alleged suit promissory note Ex.A.1 to compare the alleged signature of the first petitioner in the promissory note with the admitted signatures of the first petitioner.

5. Upon hearing the learned counsel appearing for the parties and considering the evidence adduced in the case, the Trial Court dismissed the Interlocutory Application by order dated 27.06.2011 observing that though the petitioners had entered appearance in the suit on 4.3.209 and the plaintiff's evidence was closed on 24.11.2009 and the case was posted for the defendants side evidence continuously from 30.11.2009 but the instant Interlocutory Application was filed on 22.6.2010 and therefore, it is evident that the petition was filed merely to drag on the proceedings. It is against this order the present Civil Revision Petition has been filed by the defendants.

6. Mr.M.R.Jothimanian, learned counsel appearing for the revision petitioners/defendants would submit that according to the defendants, they never borrowed any amount from the respondent and they

had not given any promissory note to the respondent and that the suit pro-note is a forged one and the claim of the respondent in the suit is illegal. According to the first defendant, he used to sign only as T.Jothi but in the alleged pro-note, it is found as M.Jothi. Since the suit pro-note is a vital document to prove their case, they filed the instant Interlocutory Location praying to send the alleged suit promissory note Ex.A.1 to compare the alleged signature of the first petitioner in the promissory note with the admitted signatures of the first petitioner and thumb impression for expert's opinion from the Forensic Sciences Department, Chennai. However, trial Court, without appreciating the facts and contentions of the revision petitioners, came to the conclusion that the instant Application was filed with a view to protract the proceedings, which cannot be countenanced. Ultimately, the learned counsel has contended that the revision petitioners must be given an opportunity to prove their case by sending Ex.A.1 promissory note to the Forensic Sciences Department for getting expert's opinion. Therefore, the learned counsel for the revision petitioners would pray that the Civil Revision Petition may be allowed by setting aside the impugned order of the Trial Court.

7. Heard Mr.M.R.Jothimanian, learned counsel appearing for the revision petitioners and perused the records. However, there is no representation on behalf of the respondent/plaintiff.

8. Considering the submissions made by the learned counsel appearing for the revision petitioners and the facts of the case, this Court is of the view that revision petitioners/defendants shall be afford an opportunity to prove their case and therefore, the trial Court shall send the relevant documents to the Forensic Sciences Department at Chennai, for comparison by the handwriting and finger print expert and to obtain their opinion. Hence, the impugned order of the trial Court is hereby liable to be set aside.

9. Accordingly, the order dated 27.06.2011 passed in I.A.No.79 of 2010 in O.S.No.14 of 2009 on the file of the learned Subordinate Judge, Mettur, Salem District, is set aside and the matter is remitted to the Trial Court to consider afresh I.A.No.79 of 2010 in O.S.No.14 of 2009 by giving opportunity to the revision petitioners as well as the respondent for filing necessary documents for comparison by the handwriting and finger print experts of Forensic Sciences Department at Chennai and to get their opinion. The Trial Court is directed to dispose of I.A.No.79 of 2010 in O.S.No.14 of 2009 on merits and in accordance with law, as early as possible. The connected Miscellaneous Petition is closed. No order as to costs.

18.04.2016

Index : yes / no

Internet :yes / no

asvm

To

The Subordinate Judge,
Mettur, Salem District .

D.KRISHNAKUMAR, J.

(asvm)

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