

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.12.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD)No.2635 of 2017

and

C.M.P. No.12576 of 2017

Arasan

..Petitioner

Vs.

1.Rajina Beevi
2.Sajithabegam
3.Atham Ameer ali
4.Hakkim Meera

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A. No.29 of 2017 in A.S. No.10 of 2015 dated 22.06.2017 on the file of the Court of II Additional District and Sessions Judge, Chidambaram and allow the said I.A. by allowing this Civil Revision Petition.

For Petitioner : Mr.A.Muthukumar

For Respondents : No Appearance for R1 to R3
Mr.S. Venkatesh for R4.

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order passed in I.A. No.29 of 2017 in A.S. No.10 of 2015 dated 22.06.2017 on the file of the Court of II Additional District and Sessions Judge, Chidambaram.

2. The learned counsel for the revision petitioner would submit that the revision petitioner has filed an application in I.A. No.29 of 2017 in A.S. No.10 of 2015 before the II Additional District and Sessions Judge, Chidambaram to appoint an Advocate Commissioner to send the original promissory notes viz., Ex.A1 dated 20.08.2004, Ex.A2 dated 05.09.2004 and Ex.P1 sale deed to be executed by the revision petitioner along with vakalat and written statement for comparison of the signature of the petitioner by the hand writing expert.

3. According to the learned counsel for the petitioner, the respondents filed the suit before the Sub-Court, Chidambaram, in O.S. No.27 of 2008 for recovery of the due amount on the promissory note dated 20.08.2004 for Rs.80,000/- and another promissory note dated 05.09.2004 for Rs.70,000/-. In the aforesaid suit the petitioner has filed the written statement specifically denying the signature in pro note Ex.A1. The trial

<http://www.judis.nic.in> Court has decreed the suit against the revision petitioner. Challenging the

said judgment and decree passed by the trial Court, the revision petitioner has preferred an appeal in A.S. No.10 of 2015.

4. Pending the appeal before the II Additional District and Sessions Judge, Chidambaram, the Interlocutory Application filed by the revision petitioner in I.A. No.29 of 2017 to forward the disputed documents for the opinion of the handwriting expert. The Appellate Court taking note of the fact that the petitioner had not taken steps to file the petition in time and only after two years he filed the present application, and that the suit was filed in the year 2007 and after the delay of seven years, the present application has been filed by the petitioner to compare the signature in written statement and vakalat filed in the earlier suit dated 2006 in O.S. No.371 of 2006, dismissed the above said application. According to the petitioner, the dismissal of the said application is erroneous and unsustainable. Therefore, the Civil Revision Petition before this Court.

5. Per contra, the learned counsel for the respondent would submit that the petition is not maintainable at the stage of Appeal Suit that too at belated stage, therefore, it is liable to be dismissed.

6. Learned counsel for the petitioner relying upon the Full Bench decision of the judgment of the *High Court of Hyderabad (For the State of Telangana and the State of Andhra Pradesh) reported in 2016 (2) CTC 481 in the case of Bande siva Shankara Srinivasa Prasad Vs. Ravi Surya Prakash Babu and others* submitted that there is no time limit fixed seeking handwriting expert's opinion, and therefore, the reason as stated in the petition is also contrary to the Full Bench judgment of the Andhra Pradesh High Court. The next contention of the petitioner is that when the petitioner/defendant has denied the signature on the promissory note, the present application has been filed to prove that the said signature in the promissory note is an unauthorized one and therefore, the Court below ought to have entertained the same.

7. At this juncture, it is useful to extract the decision rendered by this Court in the case of *Kannamma Vs. P.Sakunthala* in *CRP.PD.No.156 of 2009*, wherein this Court has held in paragraphs 9 and 10 as follows.

“9. In *Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530*, the issue before the Supreme Court was regarding the observation made by the First Appellate Court about the failure on the part of the Defendants to prove that her signature was

forged. By concurring with the views of the High Court, in setting aside the findings of the trial Court, the Supreme Court observed thus :-

"19. The trial court had analysed the evidence properly and had dismissed the suit by giving cogent reasons. The first Appellate Court reversed it by wrongly placing onus on the Defendants. Its observation that when the execution of an unregistered document put forth by the plaintiff was denied by the Defendants, it was for the Defendants to establish that the document was forged or concocted, is not sound proposition. The first Appellate Court proceeded on the basis that it is for the party who asserts something to prove that thing; and as the Defendants alleged that the agreement was forged, it was for them to prove it. But the first appellate court lost sight of the fact that the party who propounds the document will have to prove it. In this case the plaintiff came to court alleging that the first defendant had executed an agreement of sale in his favour. The first defendant having denied it, the burden was on the plaintiff to prove that the first Defendant had executed the agreement and not on the first defendant to prove the negative. The issues also placed the burden on the plaintiff to prove the document to be true. No doubt, the plaintiff

attempted to discharge his burden by examining himself as also scribe and one of the attesting witnesses."

10. In *P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005 (3) CTC 12)*, Division Bench of this Court opined that when the defendant denied the Signature in a particular document which is very much relied on by the plaintiff, it is for the plaintiff to take steps to ascertain the genuineness of the disputed signature by sending the document to hand writing expert.

following the aforesaid decision, this Court decided similar issues in the case of ***P.Stanley Buck Vs. D.Govindaraj reported in (2009) 7 MLJ 908.***

8. In the aforesaid judgment, this Court has held that when the defendant denied the signature in a particular document, burden of proof is lies on the plaintiff to prove that the signature of the defendant is genuine. Therefore, the burden lies on the plaintiff to prove that the said signature of the defendant is an authorized one.

9. In the light of the aforesaid judgment of this Court, this Court

is not inclined to entertain the Civil Revision Petition. The parties concerned can agitate the matter in the Appeal Suit to prove the promissory notes viz., Ex.A1 and Ex.A2 on the basis of the oral and documentary evidence.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2017

RKP

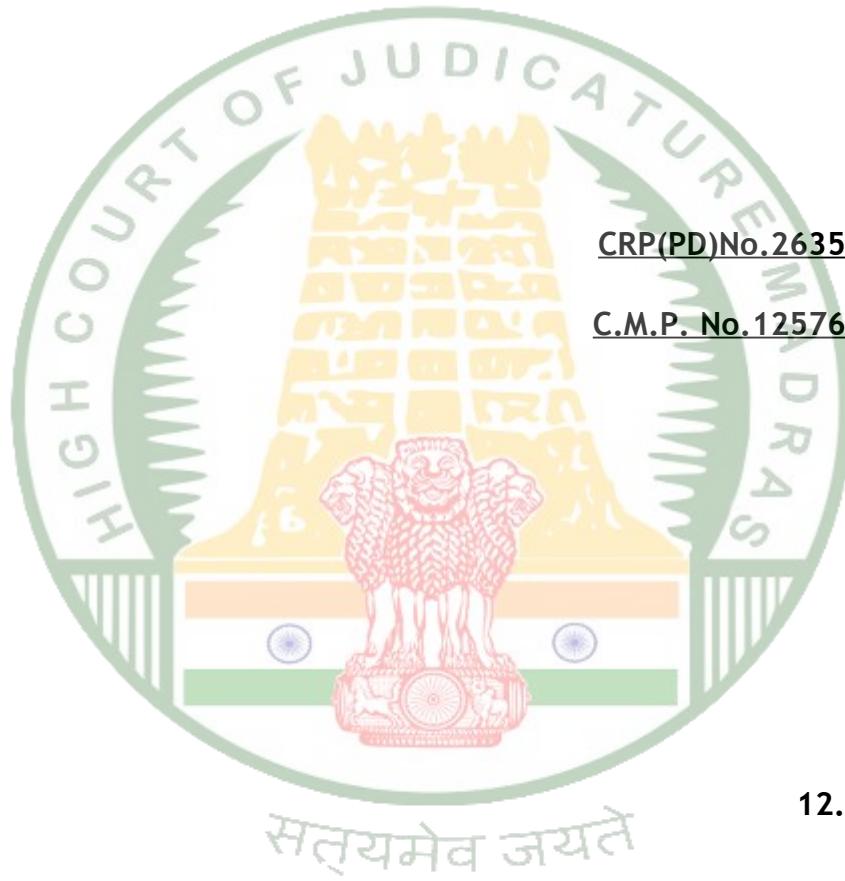
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Speaking order/Non Speaking order

To

The II Additional District and Session Judge,
Chidambaram

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