

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.PD.No.3900 of 2017

and

C.M.P.No.18217 of 2017

M.Ponraj

..Petitioner

Vs.

M.Selvi

..Respondent

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this revision and set aside the order of the II Additional District Judge Tiruppur passed in I.A.No.268 of 2017 in O.S.No.142 of 2016, dated 21.06.2017 and consequently allow the application as prayed for. सत्यमेव जयते

For Petitioner : Mr.V.P.Sengottuvel

WEB COPY ORDER

According to the petitioner, the respondent herein filed a suit in OS.No.142 of 2016 before the II Additional District Judge, Tiruppur for specific performance. The petitioner herein filed written statement on 22.10.2016. Thereafter, the case has been posted for trial and PW1 was examined, cross examination was

concluded and PW2 has to be examined. At this stage, the petitioner has filed the application in IA.No.268 of 2017 seeking for appointment of hand writing expert to determine the genuineness of the signature contained in Ex.A2 with Ex.A1. The respondent filed counter statement and denied the same. The trial court considered the contention of both parties and dismissed the application without appreciating the case of the petitioner. Hence, the petitioner has filed the present Civil Revision Petition before this Court.

2. The learned counsel for the petitioner would submit that the petitioner has specifically raised the averments in the written statement in paragraph 4 by stating the alleged endorsement is a rank forgery and the signature contained in Ex.A2 is not at all belonging to the petitioner. The said signature has been disputed by the petitioner in the written statement. According to the petitioner, to prove the forgery of the signature present application has been filed at the stage of trial commenced. The trial court without considering the said fact, erroneously dismissed the said application.

3. Heard the learned counsel for the petitioner and

<http://www.judis.nic.in> perused the records. Controversy in the present revision petition is

that, the petitioner filed an application for perusal of signature to appoint a commissioner having special skill in art of hand writing to examine and compare signature in Ex.A2 with Ex.A1 and file a report. On perusal of the records passed by the court below, the trial court has come to conclusion that the said application has been filed belatedly at the stage of the trial commenced and evidence of PW1 was concluded and PW2 has to be examined. Apart from that when the petitioner himself has denied in the written statement, the signature under Ex.A1, it is the burden of proof lies on the part of the plaintiff to prove the genuineness of Exs.A1 and A2.

4. At this juncture, it is useful to extract of the decision rendered by this Court in the case of **Kannamma Vs. P.Sakunthala** in **CRP.PD.No.156 of 2009**, wherein it is 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.*

5. Therefore, in view of the above fact and the decision cited supra, the petitioner has filed the instant application belatedly and it is for the plaintiff to establish the signature denial of the defendant in the written statement. Therefore, there is no warrants to interfere with the orders passed by the court below. Therefore, the orders passed by the court below is confirmed. There is no error or illegality in the order passed by the court below. The impugned order passed by the court below is confirmed.

6. In the result, the Civil Revision Petition fails and accordingly, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

26.10.2017

Speaking/Non-speaking order

Index : Yes/No

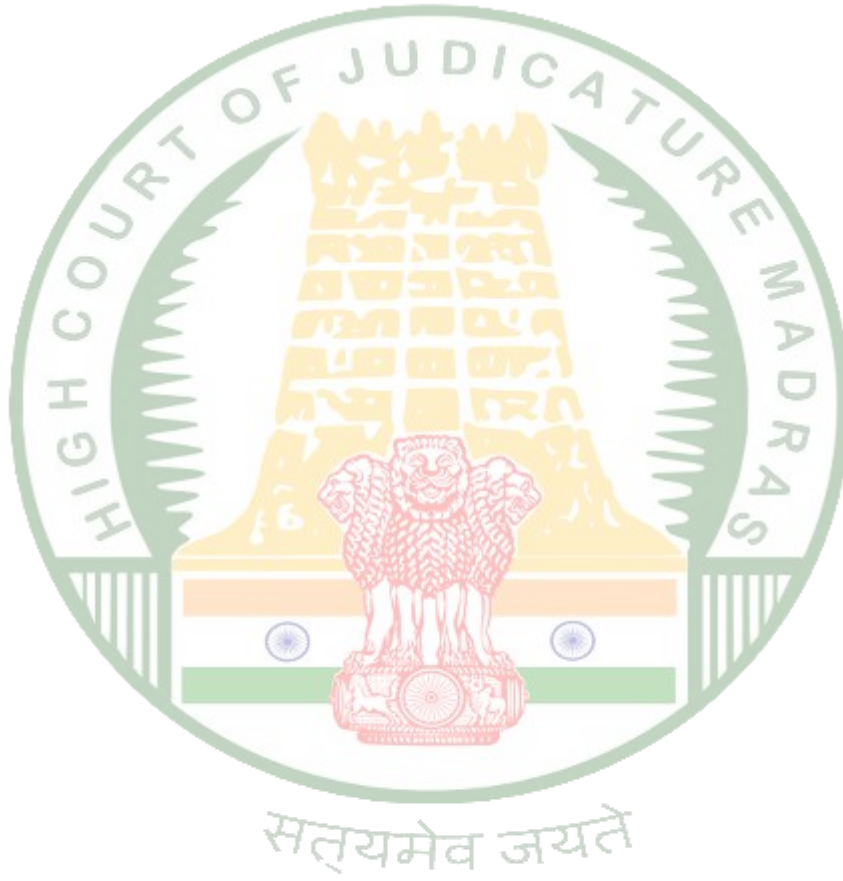
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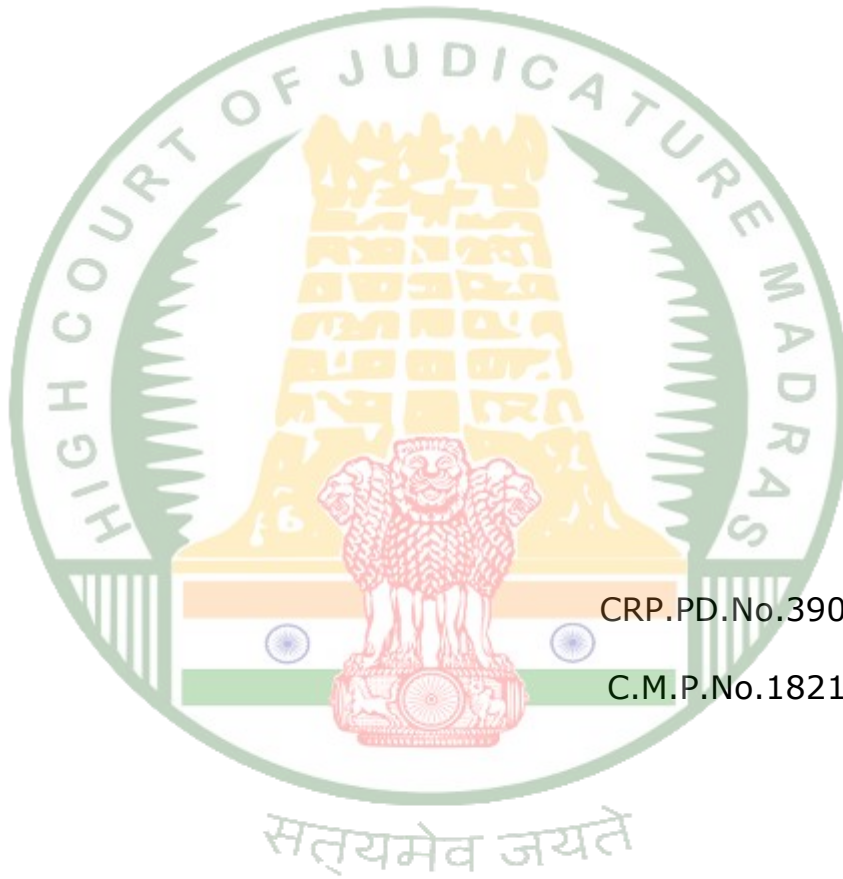
The learned II Additional District Judge,
Tiruppur.



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D.KRISHNAKUMAR. J,

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