

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD)No.4049 of 2017

and

C.M.P.No.18931 of 2017

C.Subramani

...Petitioner

Vs.

S.Mariya Aruldas

..Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 11.08.2017 passed in I.A. No.407 of 2017 in O.S. No.226 of 2015 on the file of II Additional District Judge, Tiruppur.

For Petitioner

: Mr.B.Vijayakumar

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ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 11.08.2017 passed in I.A. No.407 of 2017 in O.S. No.226 of 2015 on the file of the II Additional District Judge, Tiruppur.

2. The learned counsel for the petitioner submitted that, the respondent/plaintiff has filed a suit for recovery of money. In the aforesaid suit, written statement has been filed by the petitioner/defendant. Thereafter, issues have been framed and posted for trial. Further plaintiff's side evidence (PW1) is closed and now is at the stage of cross examination. At this stage, the petitioner has filed the instant application in I.A. No.407 of 2017 in O.S.No.226 of 2015 before the II Additional District Judge, Tiruppur under Section 45 of the Indian Evidence Act to compare the signature found in the documents to an Handwriting Expert.

3. Counter statement has been filed by the respondent in the said application. After considering the contention of the parties, the Court below had dismissed the said application. Challenging the aforesaid order, the present Civil Revision Petition has been filed before this Court.

4. The learned counsel for the petitioner would submit that when the petitioner has not made the execution of promissory note in favour of the respondent/plaintiff, the petitioner has filed the application in I.A. No.407 of 2017 before the II Additional District Judge, Tiruppur for sending the document for comparison. Since, there is no prejudice caused to the respondent/plaintiff, therefore, the order passed by the Court below is liable to be set aside.

5. In view of the above submission made by the learned counsel for the petitioner, I have perused the materials available on record. The Petitioner has filed the present application to allow the handwriting expert to inspect the Ex.A1 Pro Note, permit the expert to photos, photo copies of Exhibit A.1 in the presence of the responsible officer of the Court and direct the expert to give report with respect the aforesaid signature and the particulars found in Exhibit A1 Pro Note.

6. Counter statement has been filed by the respondent specifically making an objection that the petitioner has not produced any signed documents for comparison of his signature, or any particulars. Moreover, the said application is filed at the stage of cross examination of PW1. Therefore, the petitioner with an intention to drag on the proceedings, has filed the said I.A. No.407 of 2017. The trial Court has also held that the petitioner has not filed any documents to compare his signature in Exhibit (A1). Further, when the suit has been filed by the respondent/plaintiff, it is the burden on the respondent/plaintiff to prove that the petitioner/defendant has executed the agreement, therefore, it is for the plaintiff to dispute signature by sending the documents.

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.

8. In the light of the above no prima facie case has been made out by the petitioner. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

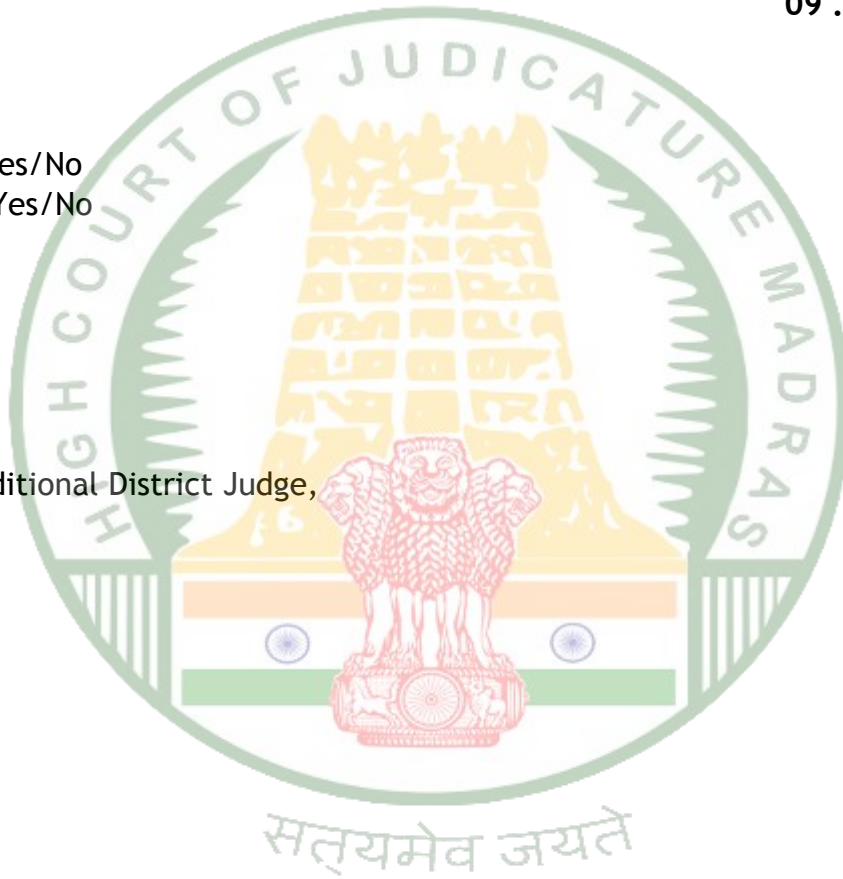
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Index :Yes/No
Internet:Yes/No

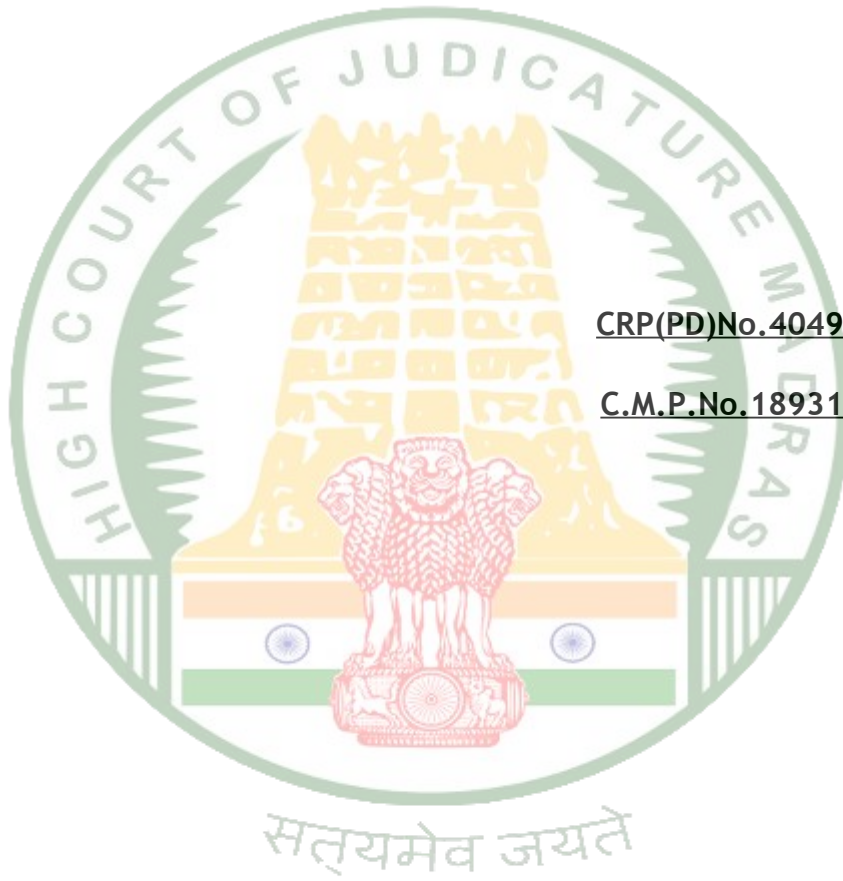
To

The II Additional District Judge,
Tiruppur.



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D.KRISHNAKUMAR,J.
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