

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-06-2017

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

**C.R.P. PD No.687 of 2017
and C.M.P.No.3480 of 2017**

1.Ezhilarasi		
2.S.Jayaraman	...	Petitioners

Vs

1.Daniel Yuvasingh		
2.G.Sumathi	...	Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.01.2017 made in I.A.No..13910 of 2014 in O.S.No.11343 of 2010 on the file of VII Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.M.G.Sugumaran

For Respondents : Mr.N.Karthikeyan for R1

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 24.01.2017 made in I.A.No..13910 of 2014 in O.S.No.11343 of 2010 on the file of VII Additional Judge, City Civil Court, Chennai.

2. The petitioners are defendants 1 & 2, the 1st respondent is the plaintiff and the 2nd respondent is the 3rd defendant in the suit. The 1st respondent filed suit in C.S.No.921 of 2006 (transferred to City Civil Court and re-numbered as O.S.No.11343 of 2010) on the file of the VII Additional Judge, City Civil Court, Chennai against the petitioners and the third respondent for recovery of money based on two promissory notes dated 12.02.2004. The petitioners and the second respondent filed written statement during November 2007 and are contesting the suit. Trial commenced, first respondent examined himself as P.W.1 and marked documents. He was cross examined by petitioners with regard to suit promissory notes. The first petitioner examined himself as D.W.1. When the suit was posted for further evidence, the petitioners filed I.A.No.11379 of 2014 under Order 7 Rule 11 (d) of CPC to reject the plaint on the ground that the plaint is not maintainable and is barred by limitation. The first respondent filed counter affidavit denying the averments made in the application. The learned Trial Judge, considering the averments in the affidavit and counter affidavit, dismissed the application. The petitioners filed I.A.No.13910 of 2016 under Order 26 R10 (A) r/w Section 151 CPC to send original plaint document No.2 hand written document dated

12.02.2004 to the office of the handwriting expert, forensic department, Mylapore, Chennai for expert opinion with regard to alteration of the year 2002 or 2004 by appointing Advocate Commissioner for carrying the document and submit the report of the expert.

3. According to the petitioners, Ex.A.2, promissory note is handwritten and the year in the said promissory note is altered as 2004 from the original year 2002. The first respondent as P.W.1 in cross examination has admitted the alteration and therefore the said document must be sent to handwriting expert through Advocate Commissioner to get expert opinion with regard to alteration of the year 2002 or 2004. According to the petitioners, to save limitation, the first respondent has altered the year in Ex.A2 as 2004 from the original year 2002.

4. The first respondent filed counter affidavit and denied all the averments made in the affidavit filed in support of the petition. The first respondent stated that the promissory note was written by the petitioners only. The earlier application in I.A.No.11379 of 2014 filed under Order 7 Rule 11 CPC filed by the petitioners to reject the plaint

on the ground that the original writing as 2002 was altered as 2004 to save limitation and plaint does not disclose any cause of action was dismissed by the Trial court on 23.09.2014. Only to prolong the suit, the present application is filed and prayed for dismissal of the application.

5. The learned Judge, considering the averments in the affidavit, counter affidavit and Exs.A1 & A2 promissory notes dismissed the application holding that the date in Ex..A2 – promissory note was over written and this can be witnessed through naked eye and the points regarding alteration and overwriting could be elicited from P.W.1 by cross examining him and the first petitioner / first defendant did not deny the execution of the document.

6. Against the order of dismissal dated 24.01.2017 in I.A.No.13910 of 2016 in O.S.No.11343 of 2010, the present Civil Revision Petition is filed.

7. The learned counsel for the petitioners submitted that the learned Judge did not properly appreciate the admission of PW1 with regard to alteration of the year 2002 and expert opinion with regard to

alteration/addition of the year 2002/2004 would help the court to decide the case and secure justice. The impugned order passed without hearing the second respondent/third defendant amounts to violation of natural justice. The learned Judge is not correct in stating that the alteration and overwriting in Ex.A2 can be elicited by cross examining P.W.1. The learned Judge failed to see that the application was filed after examination of PW1 and DW1. The learned counsel for the petitioners relied on the following judgments -

(a) 2008 (3) MLJ 897 [Chandran Udayar v. Kasivel]

(16) It is not out of place to point out although there is no legal bar to a judge using his own eyes to compare disputed writing with the admitted writing, even without the aid of evidence of any handwriting expert, the judge should as a matter of prudence and caution, hesitate to base his finding with regard to the identity of handwriting and therefore it is not advisable that a judge should take upon himself the task of comparing the admitted writing with the disputed one in order to find out whether the two agree with each other and prudent course is to obtain the opinion and assistance of an expert.

(b) 2011 (2) LW 308 [Elumalai v. Subbaramani]

28. Adverting to the facts of the present case, since various scientific avenues are available for finding out the age of the ink in a document, it must be subjected to tests as suggested by various scientists. I follow the ratio in the decisions in Kalyani Baskar's case and T.Nagappa's case above, and direct to refer the disputed document to such examination in order to provide an opportunity when a good material is available, to rebut the presumption as per law, by non-destructive method in this regard.(Emphasis supplied).

The learned counsel further contended that even though the learned Judge can verify the overwriting even without the evidence of handwriting expert by way of caution, the learned Judge must get the opinion of the handwriting expert as assistance for deciding the issue.

8. The learned counsel for the first respondent submitted that the first respondent as PW1 has stated in cross examination that there is overwriting in Ex.A2 with regard to the year. He denied that the year 2002 was altered as 2004. The first respondent also stated that promissory notes were prepared by the brother of the first petitioner

and any overwriting must have been done by the brother of the first petitioner. The first petitioner admitted the execution of promissory notes Exs.A1 & A2 and reading of A.2 clearly shows that the same was executed only in the year 2004 and prayed for dismissal of the application.

9. Heard the learned counsel for the petitioners, respondents and perused the materials available on record.

10. From the materials available on record, it is seen that the first respondent has filed the suit for recovery of money based on two promissory notes marked as Exs.A1 & A2. Both the promissory notes were dated 12.02.2004. Ex.A1 promissory note is typed written and Ex.A2 is handwritten. According to the petitioners, in Ex.A2, there is overwriting with regard to the year of promissory note. The first respondent, as PW1 has admitted that there is a overwriting in Ex.A2 but denied the said overwriting is for altering the year as 2004. The first respondent also deposed that Ex.A2 was written by the brother of the first petitioner and the petitioners have admitted the execution of promissory notes. It is not the case of the petitioners to verify the overwriting in Ex.A2 to find out that the first respondent has made

such alteration. When the first respondent has admitted that there is overwriting, there is no necessity to send such document to obtain opinion by handwriting expert, as there is no plea to find out who has made such alteration – whether the first respondent has made such alteration.

11. The learned Judge has held that even to naked eye, it is clear that there is overwriting in Ex.A2. The learned Judge, after going through Ex.A.2 has held that by mistake, the alteration of the date it may be crept in. It is also pertinent to note that Ex.A1 is also dated 12.02.2004 and it was typed written. The execution of both the documents was not denied by the petitioners. In view of the admission of first respondent as PW1 and finding of the learned Judge that alteration is visible to naked eye, there is no necessity to send the document to get opinion of handwriting expert. It is also pertinent to note that earlier application in I.A.No.11379 of 2014 filed under Order 7 Rule 11 CPC by the petitioners to reject the plaint on the very same ground was dismissed on 23.09.2014 and petitioners have not taken any further proceedings against the said order of dismissal and have filed the application in I.A.No.13910 of 2016 in September 2016 after examining of PW1 & DW1. It is clear from the above, the intention of

the petitioners is only to drag on the proceedings. In the said circumstances, the judgments relied on by the learned counsel for the petitioners do not advance the case of the petitioners. Hence, I do not find any illegality or irregularity in the order passed by the Trial Court warranting interference by this Court.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.06.2017

Speaking/Non-speaking order
Index : Yes
rgr

To

The VII Additional Judge,
City Civil Court,
Chennai.

V.M.VELUMANI, J.

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