

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.4021 of 2016
and
C.M.P.No.20312 of 2016

K.K.Kathavarayan

.. Petitioner

Vs.

P.N.Nanjappan (died)

1. P.N. Amirthavalli
2. P.N.Nallasamy

P.N.Sundararajan (died)

3. Shanthi Sundararajan
4. Aswin Priya
5. Harini

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.11.2016 in I.A.No.589 of 2016 in O.S.No.163 of 2003 on the file of the Sub-Court, Gobichettipalayam.

For petitioner : Mr.N.Manokaran

For respondents : Mr.M.Narayanaswamy

ORDER

In a suit for recovery of money, the first defendant has taken out an application under Section 45 read with Section 73 of the Indian Evidence Act to send the suit promissory note along with the admitted signature of the first defendant found in the registered partition deed, for comparing the signature and to obtain expert opinion. The said application was dismissed as belated, against which, this Civil Revision Petition is filed.

2. It is the contention of the learned counsel for the petitioner that normally, the burden is on the plaintiff to prove the execution of the promissory note. When the same is disputed as forgery, the burden is all the more on the plaintiff to send the same for comparison of the signature with an expert to prove it. Since the plaintiff has been keeping quiet, the first defendant has filed the above application. In fact, on an earlier occasion, the first defendant has also filed another application in I.A.No.208 of 1999 to send the disputed voice of P.W.2 to a voice expert for voice comparison. The said application was dismissed. Thereafter, this application is filed along with another application to send for the documents from the Electricity Department, wherein the signature of the first defendant is available.

However, having filed the registered partition deed, dated 09.07.2001, wherein admitted signature is found, it is unnecessary to summon the Executive Engineer, TANGEDCO to produce the document. Therefore, I am of the opinion that the partition deed which is filed along with the application, containing the signature of the first defendant, may be sent to an expert for opinion along with the suit promissory note. In this regard, appropriate steps may be taken by the first defendant to take the document to the expert and ensure the safety of the same. The above exercise shall be done within one month from the date of receipt of a copy of this order.

3. Accordingly, the impugned order passed by the Sub-Judge in I.A.No.589 of 2016 is set aside. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, C.M.P. is closed.

10.01.2017

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Copy to

The Subordinate Judge, Gobichettipalayam.

PUSHPA SATHYANARAYANA, J

CS

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