



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2017

CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

C.R.P (PD) (MD) No.499 of 2017

and

C.M.P (MD) No.2358 of 2017

Nagarathinam

.. Petitioner/Defendant

Vs.

Muthukrishnan

.. Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 06.10.2016 passed in Interlocutory Application No.428 of 2015 in Original Suit No.519 of 2011 by the Principal Sub Court, Dindigul.

For Petitioner

: Mr.M.P. Senthil

ORDER

This Civil Revision Petition is filed against the dismissal order passed by the Trial Court in an application filed under Order 16, Rule 6 of the Code of Civil Procedure.

2.The case of the revision petitioner is that the suit is on a promissory note. The revision petitioner, who is the defendant in the suit, is in the habit of signing in English alone and the promissory note, which is the subject matter of the suit, is signed in Tamil, which is not her signature. In pursuant to this defence, when the matter was taken up for trial, after framing issues, the defendant has filed the present application to call for Thumb Register maintained by the Sub Registrar Office, where the defendant has registered a sale deed on 15.09.2008 and signed in that Register in English, as purchaser of the property.

3.The Trial Court in its order has said that the admitted signature in English cannot be compared with the disputed signature made in Tamil and by calling for the said record, no purpose is going to serve and it will not enhance the case of the defendant. It is also observed by the Trial Court that in the suit promissory note, no thumb impression is affixed and the signature found in the promissory note is in Tamil. Therefore, the Trial Court has held that there is no necessity to call for



the record and it is not going to enhance the case of the defendant.

4. The suit is of the year 2011 and the defendant has taken a specific plea that the promissory note was not executed by her and she is not in the habit of signing in Tamil. Hence, the burden of execution of the promissory note is upon the plaintiff and till then no presumption could be drawn against the defendant. While so, the present attempt to call for some documents to establish that the defendant is in the habit of signing in English is not going to enhance the case of the defendant as pointed out by the Trial Court and that document is per se not a proof for concluding that the signature found in the suit promissory note is not that of the defendant. It is the burden of the plaintiff to prove the execution of the document in the manner known to law and in a negotiable instrument, it is a primary duty of the person, who propound the negotiable instrument, to prove its due execution. It is for the Trial Court to decide whether the plaintiff discharges his onus. As a defendant, the revision petitioner is always at liberty to let in contra evidence and the present attempt to call for the Register maintained by the Sub Registrar Office alleging that the defendant has signed in English, has not been disputed or controverted by the plaintiff. Undisputed fact need not be proved. Therefore, I find that the order passed by the Trial Court is perfectly correct. Hence, there is no reason to interfere with that order and accordingly, this Civil Revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

smn

To

1. The Principal Subordinate Judge,
Dindigul.

2. The Record Keeper,
V.R. Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.P.Senthil, Advocate Sr.No. 14866

JAM/21.03.17 /PM-PN/2P-4C