

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated:05.04.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN**

**CRP(PD)No.1289 of 2018**

**and**

**C.M.P.No.6671 of 2018**

1.Krishnaveni  
2.Chinnamma  
3.Ramakrishnan

.. Petitioners

**Vs.**

Govindarajulu(deceased)  
Nagarathinamma (deceased)

1.Sarasamma  
2.Jayammal  
3.Parvathy  
4.Mercy  
5.Pradeep  
6.Preethy

.. Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair order and decretal order dated 15.11.2017 passed in I.A.No.847 of 2017 in O.S.No.185 of 2009 by the learned II Additional District Judge, Thiruvellore at Poonamallee.

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For Petitioners :M/s.G.Dilip Kumar

**ORDER**

This Civil Revision Petition has been filed by the plaintiff/petitioner against the order passed by the trial Court in I.A.No.847 of 2017 in O.S.No.185 of 2009 by the learned II Additional District Judge, Thiruvellore at Poonamallee.

2. The brief facts are as follows;

(i) The petitioners herein, as plaintiffs filed a suit in O.S.No.185 of 2009 before the learned II Additional District Judge, Thiruvellore at Poonamallee against the respondents/defendants praying for a direction directing them to pay the plaintiffs, a sum of Rs.14,47,600/- and interest thereon at the rate of 24% per annum from the date of plaint till the date of realisation. Originally the suit was filed against the defendant one Govindarajalu.

(ii) The suit is based on a promissory note executed by the said Govindarajulu/1<sup>st</sup> defendant in favour of plaintiffs on 12.09.2009 for a sum of Rs.14,00,000/-. After his death, his mother one Tmt.Nagarathinammal was impleaded as 2<sup>nd</sup> defendant. Pending suit, since the 2<sup>nd</sup> defendant died, her legal heirs, who are the defendants 3 to 5 were brought on record. Denying the averments in the plaint,

defendants 6 to 8 filed written statement.

(iii) Pending suit, the defendants 6 to 8 moved I.A.No.965 of 2015 seeking to send certain documents viz. Ex.A.1 to A4 and suit summon and notice in IA.No.868 of 2009 received by the 1<sup>st</sup> defendant when he was alive, to Forensic Science Laboratory to compare the signature and thumb impression found therein, to prove the genuineness of the same. The petition was resisted by the plaintiffs denying the averments therein in their counter.

(iii) Thereafter, the plaintiffs filed I.A.No.847 of 2017 stating that the only admitted thumb impression of the deceased 1<sup>st</sup> defendant Govindarajulu is found in the thumb impression register relating to settlement deed dated 24.9.2009 executed by him at the Sub Registrar Office, Avadi and they have summoned the Sub Registrar, Avadi to produce the register and give evidence on that regard. It was further contended that though the Sub Registrar, Avadi had produced the register, inadvertently, it was not marked as exhibit. Hence they prayed to reopen the case to send the admitted thumb impression with disputed thumb impression in Ex.A4 through an advocate Commissioner to Forensic Lab at Chennai for obtaining Finger Print Expert opinion.

(iv) The plaintiffs have also filed I.A.No.990 of 2017 under section 45 of Evidence Act and Section 151 of CPC, praying to send the disputed document Ex.A.4 and thumb impression register containing admitted thumb impression Ex.X.1 to the Forensic Lab at Chennai for opinion of thumb impression expert to find the genuineness of the same and to appoint an Advocate Commissioner for the purpose of taking and handing over the documents from the court to the forensic lab and bring back the documents and opinion report and submit to this Court.

3. The learned trial Judge, after considering the arguments advanced on either side, dismissed the petition by observing that though the plaintiffs have obtained thumb impression register from the Sub Registrar Office, Avadi, they have not given any reason as to why they have not sent the same for finger print experts for examination. It was further observed that during the period 2015 to 2017, witnesses were examined, but the plaintiffs have not taken any steps to examine the genuineness of the finger print find in Ex.A.1 promissory note and further, in order to protract the legal proceedings, the plaintiffs have filed this petition to drag on the trial once again to a preliminary stage, hence the same is not sustainable

in law.

4. Aggrieved against the dismissal of I.A.No.847 of 2017, the plaintiffs as revision petitioners have preferred the present Civil Revision Petition.

5. Learned counsel for the revision petitioners would submit that the order of the learned trial judge in dismissing the application filed to re-open the case is erroneous and contrary to law. He would further contend that the trial court erroneously held that the petitioners/plaintiffs have not taken any steps in proving the genuinity of suit pronotes Ex.A.1 to A4 all these years. It is his further submission that the trial court misconstrued the relief sought for in the application filed for reopening the case of the petitioners/plaintiffs for referring the suit pronotes for expert opinion and erroneously dismissed the application.

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6. The contention of the revision petitioners is that, he filed a petition for re-open the case for the purpose of sending admitted thumb impression in Ex.X-1 and disputed thumb impression in Ex.A.4 pronote through an Advocate Commissioner to Forensic Lab for

obtaining expert opinion. The document containing the admitted thumb impression of 1<sup>st</sup> defendant is the thumb impression of Govindarajulu in thumb impression register at the hands of Sub Registrar, Avadi pertaining to settlement deed dt.24.9.2009. After completion of the trial, the matter was posted for arguments. The thumb impression of Govindarajulu in the thumb impression register is in the hands of Sub Registrar, Avadi, pertaining to settlement deed dated 24.09.2009 executed by Govindarajulu in favour of his son Pradeep. The learned trial Judge has dismissed the application on the ground that the document was already sent and the petitioner has not taken any steps to get expert opinion.

7. Heard the learned counsel appearing for the petitioners and and perused the materials available on record.

8. It is an admitted fact that after the death of 1<sup>st</sup> defendant Govindarajulu, his legal heirs, who are the defendants 3 to 8 have entered appearance and a written statement was also filed. In the year 2015, defendants 6 to 8 filed a petition under section 45 of

Indian Evidence Act to send disputed signature of 1<sup>st</sup> defendant in Ex.A.1 to A4 and thumb impression to Forensic Science Laboratory for obtaining expert opinion. In that petition, counter was filed by the plaintiffs stating that on 24.9.2009, 1<sup>st</sup> defendant executed a registered settlement deed in favour of one Pradeep/7<sup>th</sup> defendant, wherein, 1<sup>st</sup> defendant has affixed his thumb impression and the said document containing admitted thumb impression of 1<sup>st</sup> defendant is found in thumb impression register at the hands of Sub Registrar Avadi. Though the thumb impression register was produced, the plaintiffs have not taken any steps to send the same for finger print expert's opinion. After conclusion of trial, the suit was posted for arguments and at this belated stage, the plaintiffs have come forward with the petition for reopen the case, which according this court, is not sustainable in law. Therefore, this court finds that no infirmity or illegality with the fair and decreetal order passed by the Court below and the same is hereby confirmed.

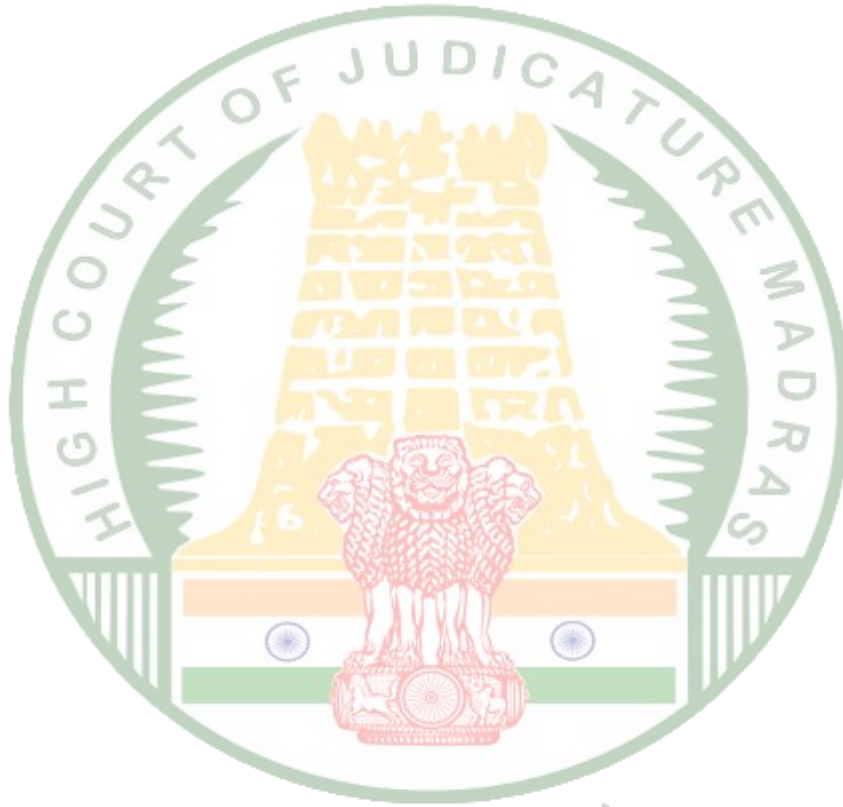
9. The Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

**05.04.2018**

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To

The II Additional District Judge,  
Thiruvellore at Poonamallee

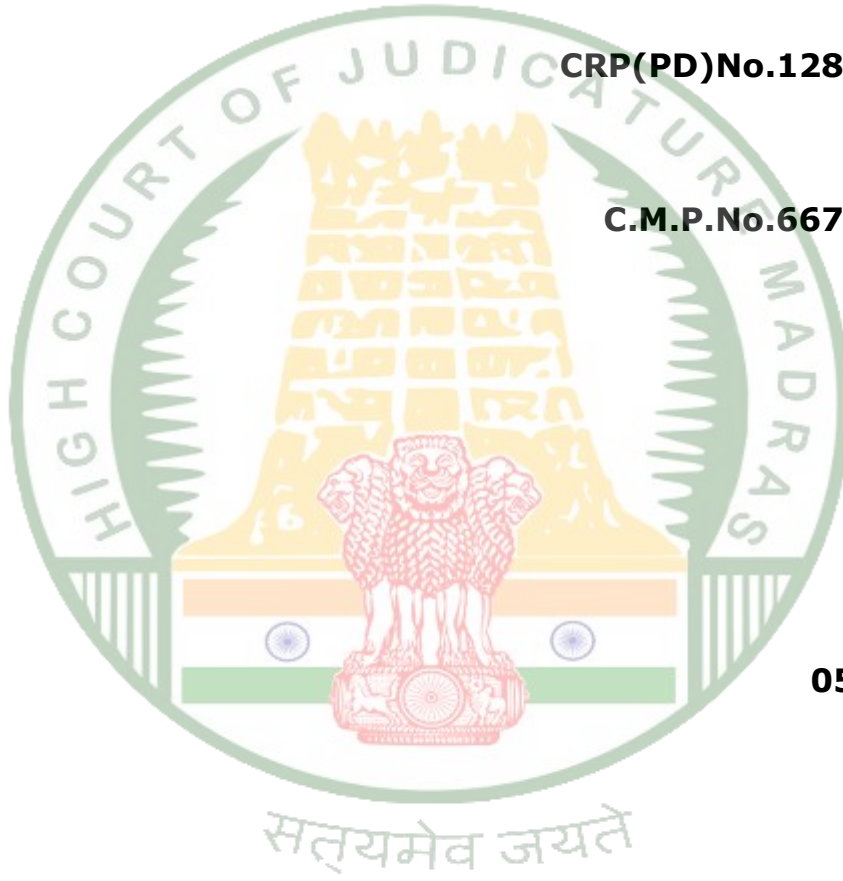


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**P.VELMURUGAN,J.**

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