

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 2 of 2018
and
CMP. No.3 of 2018

C.Rajendran

.. Petitioner

Vs

V.Shanmugam

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.218 of 2017 in O.S.No.78 of 2016, on the file of Additional District Judge, Hosur dated 20.11.2017.

For Petitioner :Mr.P.Paramasivadoss

WEB COPY

ORDER

This Civil Revision Petition is filed against the dismissal order dated 20.11.2017 passed by the learned Additional District Judge, Hosur made in I.A.No.218 of 2017 in O.S.No.78 of 2016.

2. The learned counsel for the petitioner would submit that the respondent herein has filed Suit in O.S.No.78 of 2016 before the Principal District Court, Krishnagiri. Subsequently, the revision petition has filed an application in I.A. No.218 of 2017 in the aforesaid suit for sending the disputed promissory note dated 07.11.2013 to be compared with the admitted certified copies of the official registers under Section 45 of the Indian Evidence Act read with Order 26 Rule 10 of the Code of Civil Procedure. The aforesaid application was dismissed by the Court below. Therefore, the petitioner has filed the present Civil Revision Petition before this Court.

3. The learned counsel for the petitioner would submit that the respondent has filed the aforesaid suit for recovery of money for a sum of Rs.10,00,000/- from the petitioner. The petitioner has disputed the genuineness of signature in the pro-note as alleged by the respondent/plaintiff. Therefore, filed the present application for the aforesaid prayer. The Court below has erroneously dismissed the said application.

4. In view of the facts and submissions made by the learned counsel for the petitioner and perused the materials available on record, it is seen that the Court below has rejected the petitioner's contention by stating that the aforesaid document relied by the petitioner pertaining to the year of 2013 is a Xerox copy of the proceedings issued by the District Librarian, Dharmapuri and the same is only a certified copy.

5. In the earlier occasion, this Court has held in the case of ***P.Stanley Buck Vs. D.Govindaraj*** reported in (2009) 7 MLJ 908 and observed as follows:

"26. In Thiruvengadam Pillai Vs. Navaneethammal and another, 2008 (4) SCC 530: (2008) 2 MLJ 1115, 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 held thus at p.1124 of MLJ:-

"17. 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...."

27. In *P.Sood & Co., (Manufacturing) represented by its Partner, Krishna Kumar Sood Vs. Peerchand Misrimalji Bhansali, Prop, Meena Metals, (2005) 2 MLJ 603: (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."*

6. In the light of the aforesaid judgment, the present application filed by the petitioner cannot entertained by this Court and the same is liable to dismissed.

7. The Civil Revision Petition is dismissed with liberty to the petitioner to adduce the necessary documentary evidence before the Court below, if necessary. Consequently, connected miscellaneous petition is closed. No costs.

WEB COPY 05.01.2018

Index: Yes/ No
Internet : Yes/No
Speaking Order/Non Speaking Order
RKP

D. KRISHNAKUMAR J.,
RKP

To

The Additional District Judge,
Hosur.



CRP (PD) No. 2 of 2018
and
CMP. No.3 of 2018

05.01.2018

WEB COPY