

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1213 of 2015
and M.P.No.1 of 2015

Kolanthan

.. Petitioner

Vs.

1.Lakshmi
2.Minor Prakash
3.Minor Priya

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.02.2015 made in I.A.No.4 of 2015 in O.S.No.190 of 2016 on the file of the Additional Subordinate Judge's Court (Trainee District Judge) of Namakkal.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.T.Dhanyakumar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 07.02.2015 made in I.A.No.4 of 2015 in O.S.No.190 of 2016 on the file of the Additional Subordinate Court (Trainee District Judge) of Namakkal.

2.The petitioner is the plaintiff and respondents are the defendants 2 to 4 in O.S.No.190 of 2016 on the file of the Additional Subordinate Court (Trainee District Judge), Namakkal. The petitioner filed the said suit against one Selvaraj/first defendant, respondents herein and one Pavai for recovery of money. According to the petitioner, Krishnasamy, husband of the first respondent and father of the respondents 2 and 3 and first defendant borrowed a sum of Rs.3,00,000/- on 15.01.1997 and agreed to repay the same after eight years on demand by the petitioner. The said Krishnasamy and first defendant did not pay the amounts. The said Krishnasamy died and respondents are his legal heirs. The first respondent filed written statement on 23.08.2006 and first defendant filed written statement on 18.01.2007 and are contesting the suit. The petitioner was examined as P.W.1 and marked promissory note dated 15.01.1997 as Ex.A1. The respondents filed I.A.No.4 of 2015 for cancellation of Ex.A1. According to the respondents, the said document is not a promissory note as eight years time has been granted to the borrowers and amounts is not payable on demand. The said document is not properly stamped.

3.The respondents submitted that on the day when the document was marked as Ex.A1, the Advocates were on boycott of Court and the respondents' Advocate was not present and could not object to marking of the said document.

4.The petitioner filed counter affidavit and contended that respondents did not object to marking of the document and therefore, he cannot object after marking of the said document. The document already marked can not be cancelled. Ex.A1 is a promissory note and is properly stamped and if document is insufficiently stamped, the petitioner may be permitted to pay the deficit stamp duty.

5.The learned Judge considering the averments and the Sections 2(22), 4 and 5 of Negotiable Instruments Act, held that Ex.A1 is a promissory note. The learned Judge held that the said document is a promissory note as per Section 5 of Negotiable Instruments Act. The stamp duty payable for a promissory note contemplated under Section 5 is as per Section 49 (B) of the Stamp Act and stamp duty payable is as per bill of exchange. In view of the

same, the learned Judge held that petitioner has not paid proper stamp duty for the said promissory note.

6.As per proviso to Section 49, the deficit stamp duty for the promissory note cannot be rectified and it is inadmissible for any purpose. The learned Judge came to the conclusion, considering the three judgments referred by the learned counsel for the respondents (i).**2006(2) CTC 474 (R.Ravindran Vs. M.Rajamanickam)**, (ii).**84 LW 185 (Thennappa Chettiar Vs. Andiyappa Chettiar)** and (iii).**68 LW 887 (Kuppammal Vs. V.Pethanna Chetti)**. The learned Judge considering Order 13 Rule 3 of C.P.C, held that Court has power to eschew an inadmissible document even if the same was admitted without any objection by other side. The learned Judge considering the judgment of Hon'ble Apex Court reported in **2010 8 SCC 423 (Shalimar Chemical works LTD Vs. Surendra Oil and Dal Mills (Refineries) and others)**, allowed the application filed by the respondents and eschewed Ex.A1. The learned Judge invoking inherent powers of Court, suo-motu rejected plaint, as Ex.A1 was eschewed.

7.The present Civil Revision Petition is filed against the said order dated 07.02.2015 made in I.A.No.4 of 2015 in O.S.No.190 of 2016 by the petitioner.

8.The learned counsel for the petitioner reiterated the averments made in the counter affidavit and submitted that the learned Judge erred in rejecting the plaint and failed to see that petitioner can prove his case relying on original cause of action i.e., borrowing and execution of promissory note.

9.Per contra, the learned counsel for the respondents contended that once promissory note (Ex.A1) is rejected, the plaint is not maintainable and learned Judge has rightly invoked inherent power and rejected the plaint and prayed for dismissal of the Civil Revision Petition as the same is not maintainable and the only remedy available to the petitioner is to file appeal, challenging the order rejecting the plaint.

10.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

11. The learned counsel for the petitioner has contended that once document has been admitted without any objection by the respondents, the respondents are not entitled to object to the marking of the said document and is not entitled to seek rejection of the document already marked. The learned counsel for the petitioner referred to Sections 35, 65 of the Indian Stamp Act. The said contention is without merits. As per Order 13 Rule 3 of C.P.C, Court has power to reject any document at any stage of the suit when a said document is inadmissible. Order 13 Rule of C.P.C reads as follows:

"ORDER XIII-PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS:

3. Rejection of irrelevant or inadmissible documents— *The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection."*

12. In the present case, the learned Judge has held that Ex.A1, the promissory note is not properly stamped and defect cannot be rectified and held that the document is inadmissible. The Court has power to reject the same at any stage of the suit by recording

reasons for the same. A document may be inadmissible in evidence and secondly it may be admissible in evidence but admitted without following due process. If the document is admissible in evidence but marked without following the procedure, other party cannot object to said marking, subsequently if they failed to object at the time of marking of the document. If the document is inadmissible in evidence and marked even without any objection by the other party, at the latter stage the party can object to marking of the document and seek rejection of the document under Order 13 Rule 3 of C.P.C. This has been held so by the Hon'ble Apex Court in the judgment reported in **2010 8 SCC 423 (Shalimar Chemical works LTD Vs. Surendra Oil and Dal Mills (Refineries) and others)**. In view of the judgment referred to in the impugned order, the reasoning given by the learned Judge for rejection of Ex.A1 is valid and there is no reason to interfere with the said findings.

13. As far as the rejection of plaint is concerned, the learned Judge has committed grave irregularity. The learned Judge failed to consider that petitioner can substantiate his claim by relying on the original cause of action, borrowing and cause of action of promissory note and without relying on the promissory note. The

learned Judge has considered the Division Bench judgment of this Court reported in **84 LW 185 (Thennappa Chettiar Vs. Andiyappa Chettiar)** and extensively extracted the said judgment in the impugned order. But the learned Judge failed to consider paragraph 8 of the said judgment which reads as follows:

"8.A combined reading of the above provisions makes it clear that though the amount in instrument is payable within a period of six months, it cannot be said that the payment is conditional within the meaning of Section 4 of the Negotiable Instruments Act. The plaint documents 1 and 2 contain an unconditional undertaking to pay and therefore they are promissory notes within the definition of the Negotiable Instruments Act. Since time for payment was specified, it cannot be said that they are payable on demand and when payable otherwise than on demand, the documents fall under Article 49(b) of Schedule I to the Stamp Act and the proper stamp duty to be paid would be the same duty as a bill of exchange for the same amount payable otherwise than on demand. The value of the plaint documents is Rs.2 lakhs each and the stamp duty to be paid is five rupees for the first one thousand rupees and for every additional Rs.1,000 or part thereof in excess of Rs.1,000 is five rupees each. Hence there is no proper stamp duty for plaint documents 1 and 2."

A reading of this clearly shows that the petitioner is still entitled to prove his case on the original cause of action i.e., borrowing.

14. The learned counsel for the respondents contended that the present Revision is not maintainable as an order rejecting the plaint is a decree and the remedy available to the petitioner is only by way of appeal. In normal circumstances, this contention is maintainable. In the present case, the learned Judge has committed grave irregularity by rejecting the plaint when there is no application for rejection of plaint. The learned Judge suo motu rejected the plaint. By this order, the learned Judge has exceeded his power conferred on him. In view of the above facts, I am of the opinion that the said portion of order of learned Judge rejecting the plaint is liable to be set aside by exercising the extraordinary power under Article 227 of the Constitution of India.

15. In view of the judgment of Division Bench of this Court reported in **84 LW 185 (Thennappa Chettiar Vs. Andiyappa Chettiar)** referred to above, I hold that portion of the impugned order eschewing Ex.A1 is confirmed and the portion of impugned

order rejecting the plaint is set aside. The matter is remitted back to the Trial Court. The learned Judge is directed to issue notice to the petitioner and respondents and dispose of the suit on merits in accordance with law. The parties are permitted to let in evidence to substantiate their case.

16. With the above direction, this Civil Revision Petition is partly allowed.

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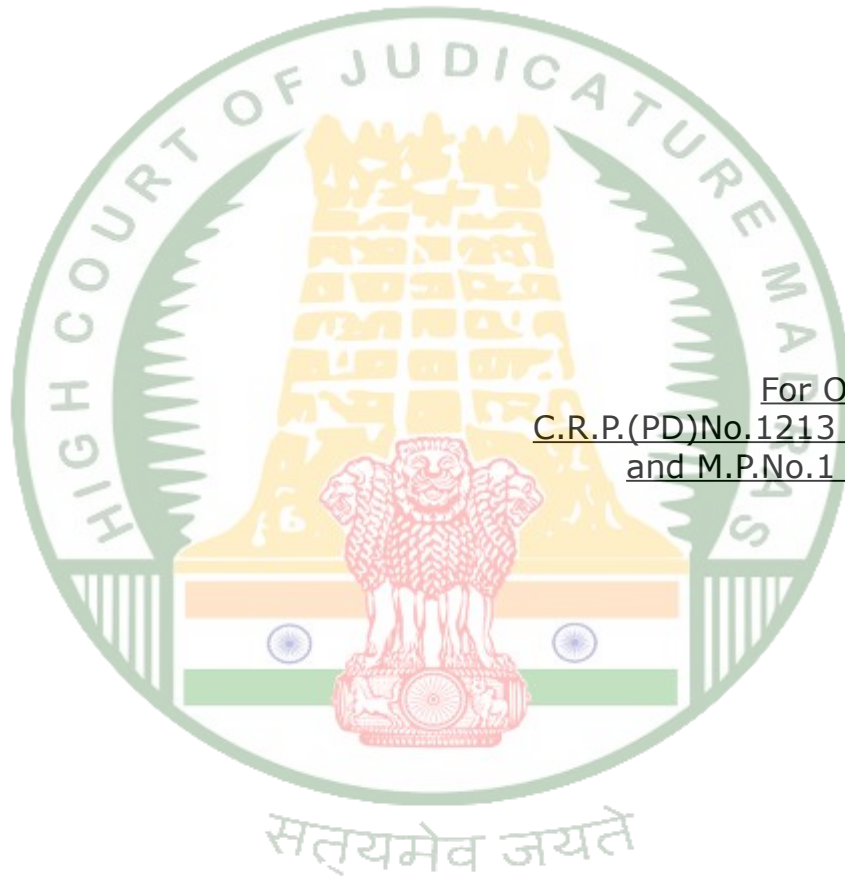
The Additional Subordinate Judge
(Trainee District Judge)

Namakkal.

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V.M.VELUMANI, J.

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For Orders in
C.R.P.(PD)No.1213 of 2015
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